

# SJ Exhibit 5

## RICHARD R. FRANK 3/10/2022

Page 1			Page 3		
1	UNITED STATES DISTRICT COURT		1	EXHIBITS	
2	EASTERN DISTRICT OF MISSOURI		2	NO.	DESCRIPTION PAGE
3	EASTERN DIVISION		3	For Defendant Green:	
4			4	Exhibit 7 7/18/19 notice of forced	
5	JAMES GARAVAGLIA, )		5	leave letter to James	
6	)		6	Garavaglia 51	
7	Plaintiff,      )		7	Exhibit 8 7/17/19 email from Richard	
8	)		8	Frank to Linda Thomas 51	
9	vs.                ) Case No. 4:20-CV-1681-CDP		9	Exhibit 9 8/28/19 withdraw of	
10	)		10	request of forced leave	
11	CITY OF ST. LOUIS, )		11	letter to Richard Frank 56	
12	et al.,            )		12	Exhibit 10 8/28/19 letter to James	
13	)		13	Garavaglia re: pre-termination review 83	
14	Defendants.      )		14	Exhibit 11 5/20/16 salary increase	
15			15	request letter to Richard	
16			16	Frank 66	
17	VIDEO-RECORDED DEPOSITION OF RICHARD R. FRANK		17	Exhibit 12 Employee Status Forms 77	
18	TAKEN ON BEHALF OF THE DEFENDANT GREEN		18	Exhibit 13 Employees Retirement System documents 81	
19	MARCH 10, 2022		19	For Plaintiff:	
20			20	Exhibit O 6/1/16 email from	
21			21	Comptroller Darlene Green	
22			22	with attached letters of request 142	
23			23	(Exhibits attached to original transcript.)	
24			24		
25			25		
Page 2			Page 4		
1	I N D E X		1	UNITED STATES DISTRICT COURT	
2	WITNESSES		2	EASTERN DISTRICT OF MISSOURI	
3	ALL WITNESSES	PAGE	3	EASTERN DIVISION	
4	For Defendant Green		4		
5	RICHARD R. FRANK		5	JAMES GARAVAGLIA, )	
6	Examination by Mr. Norwood 8		6	)	
7	Examination by Mr. Blanke 96		7	Plaintiff,      )	
8	Re-Examination by Mr. Norwood 230		8	)	
9	Re-Examination by Mr. Blanke 241		9	vs.                ) Case No. 4:20-CV-1681-CDP	
10	Re-Examination by Mr. Norwood 247		10	)	
11	EXHIBITS		11	CITY OF ST. LOUIS, )	
12	NO. DESCRIPTION PAGE		12	et al.,            )	
13	For Defendant Green:		13	)	
14	Exhibit 1 Second Amended Complaint for Employment Discrimination 62		14	Defendants.      )	
15	Exhibit 2 7/2/19 approval of request to place James Garavaglia on forced leave 41		15	VIDEO-RECORDED DEPOSITION OF WITNESS,	
16	Exhibit 3 7/2/19 notice of forced leave letter to James Garavaglia 43		17	RICHARD R. FRANK, produced, sworn and examined on	
17	Exhibit 4 7/18/19 withdraw of request of forced leave letter to Richard Frank 46		18	the 10th day of March, 2022, between the hours of	
18	Exhibit 5 7/18/19 request to place on leave letter to Richard Frank 48		19	eight o'clock in the forenoon and six o'clock in	
19	Exhibit 6 7/18/19 approval of request to place James Garavaglia on forced leave 49		20	the afternoon of that day, at the offices of Lewis	
20			21	Rice, 600 Washington Avenue, 25th Floor, St. Louis,	
21			22	Missouri, before Tara Schwake, a Registered	
22			23	Professional Reporter, Certified Realtime Reporter,	
23			24	Certified Shorthand Reporter (IL), Certified Court	
24			25	Reporter (MO), and Notary Public within and for the	
25				State of Missouri.	

1 (Pages 1 to 4)

## RICHARD R. FRANK 3/10/2022

<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES      2      3 FOR THE PLAINTIFF:      4 Uthoff Graeber Bobinette &amp; Blanke      5 906 Olive Street, Suite 300      6 St. Louis, Missouri 63101      7 (314) 621-9550      8 by: Mr. Richard B. Blanke      9 Mr. Paul L. Schmitz      10 rblanke@ugbblaw.com      11 pschmitz@ugbblaw.com      12      13 FOR THE DEFENDANT GREEN:      14 Lewis Rice, LLC      15 600 Washington Avenue, Suite 2500      16 St. Louis, Missouri 63101      17 (314) 444-7600      18 by: Mr. Ronald A. Norwood      19 Ms. Joy McMillen      20 rnorwood@lewisrice.com      21 jmcmillen@lewisrice.com      22      23      24      25</p>	<p style="text-align: right;">Page 7</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by      2 and between Counsel for Plaintiff and Counsel for      3 Defendants that this deposition may be taken by      4 Tara Schwake, Notary Public and Certified Realtime      5 Reporter, thereafter transcribed into typewriting,      6 with the signature of the witness being expressly      7 reserved.      8 THE VIDEOGRAPHER: We are now on the      9 record. Today's date is March the 10th, 2022, the      10 time is approximately 9:47 AM. This is the      11 video-recorded deposition of Richard Frank in the      12 matter of James Garavaglia versus the City of      13 St. Louis, et al., Case Number 4:20-CV-1681-CDP, in      14 the United States District Court for the Eastern      15 District of Missouri.      16 This deposition is being held at the      17 law offices of Lewis Rice. Reporter's name is Tara      18 Schwake, my name is David Doell and I am the legal      19 videographer, we're here with Alaris Litigation      20 Services.      21 The attorneys attending please      22 introduce yourselves and the parties you represent?      23 MR. BLANKE: Is this working?      24 Working okay? Richard Blanke and Paul Schmitz      25 representing Plaintiff, James Garavaglia.</p>
<p style="text-align: right;">Page 6</p> <p>1 FOR THE DEFENDANT CITY OF ST. LOUIS:      2 City of St. Louis, Law Department      3 City Counselor's Office      4 1200 Market Street, Room 314      5 St. Louis, Missouri 63103      6 (314) 622-4554      7 by: Ms. Sheena Hamilton, City Counselor      8 hamiltons@stlouis-mo.gov      9      10 COURT REPORTER:      11 TARA SCHWAKE, CRR, RPR, CCR, CSR      12 DAVID DOELL, Videographer      13 Alaris Litigation Services      14 711 North 11th Street      15 St. Louis, Missouri 63101      16 (314) 644-2191      17 1-800-280-DEPO      18 transcripts@alarislitigation.us      19      20      21      22      23      24      25</p>	<p style="text-align: right;">Page 8</p> <p>1 MS. HAMILTON: Sheena Hamilton, City      2 Counselor, representing the City of St. Louis.      3 MR. NORWOOD: Ronald Norwood and Joy      4 McMillen representing the Defendant, Darlene Green.      5 THE VIDEOGRAPHER: The court reporter      6 please swear in the witness and we may proceed.      7 RICHARD R. FRANK,      8 of lawful age, having been produced, sworn, and      9 examined on the part of Defendant Green, testified      10 as follows:      11 * * * * *      12 (Deposition commenced at 9:47 AM)      13 EXAMINATION      14 QUESTIONS BY MR. NORWOOD:      15 Q Okay, good morning, sir. As you      16 know, my name is Ronald Norwood, and I will be      17 examining you today in this lawsuit. Would you      18 state your full name for the record, please?      19 A Yes, it's Richard R. Frank,      20 F-r-a-n-k.      21 Q Okay. And, Mr. Frank, are you      22 currently employed?      23 A No.      24 Q All right. When was the last time      25 you were employed?</p>

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## RICHARD R. FRANK 3/10/2022

<p style="text-align: right;">Page 9</p> <p>1 A November 30th, 2021.</p> <p>2 Q All right. And where were you employed at that time?</p> <p>3 A City of St. Louis.</p> <p>5 Q How did it come about that you are no longer employed with the City of St. Louis?</p> <p>7 A I retired.</p> <p>8 Q And what – what was the effective date of that retirement?</p> <p>10 A The effective date of retirement was 1/1/22.</p> <p>12 Q Great. Thank you. What position did you hold when you retired from the City of St. Louis?</p> <p>15 A I was the director of personnel.</p> <p>16 Q How long did you work for the City of St. Louis?</p> <p>18 A Approximately 17 and a half years. I started June 1, 2004.</p> <p>20 Q Okay. Well, let's talk about your years of service with the City of St. Louis. When you started in June of 2004, what position did you hold?</p> <p>24 A Director of personnel.</p> <p>25 Q All right. And when you retired,</p>	<p style="text-align: right;">Page 11</p> <p>1 A I think so.</p> <p>2 Q After you graduated from Washington University, what did you do?</p> <p>4 A I was appointed to a year-long paid externship in personnel and labor relations for the State of Illinois, Department of Central Management Services, Bureau of Personnel.</p> <p>8 Q And what – what was your job title?</p> <p>9 A I started out as a human resource/personnel analyst, and then became a -- a senior analyst.</p> <p>12 Q How long did you serve in those positions?</p> <p>14 A A total of five years.</p> <p>15 Q Okay. And what did you do next?</p> <p>16 A Then I became director of human resources for the St. Louis County court system.</p> <p>18 Q During what period of time did you serve as the director of personnel – I'm sorry -- director of human resources for the St. Louis County court system?</p> <p>22 A It was from 1989 until 2004.</p> <p>23 Q And based upon what you testified to, then, from there you would have transitioned to the director of personnel for the City of St. Louis?</p>
<p style="text-align: right;">Page 10</p> <p>1 what position did you hold?</p> <p>2 A Director of personnel.</p> <p>3 Q Okay. And so just for the record, then, during your entire tenure at the City of St. Louis, you served as the director of personnel?</p> <p>6 A Yes, sir.</p> <p>7 Q All right. And we're going to talk more about your duties, responsibilities at the City of St. Louis. Let's talk first about your educational background.</p> <p>11 A Okay.</p> <p>12 Q If we could. Where did you go to school?</p> <p>14 A Undergraduate, I went to Washington University, and then I have approximately 18 hours of -- of graduate work.</p> <p>17 Q Okay. When did you go to Washington University?</p> <p>19 A 1979 through 1983.</p> <p>20 Q All right. And did you graduate?</p> <p>21 A Yes, I did.</p> <p>22 Q And what degree?</p> <p>23 A English literature.</p> <p>24 Q Okay. Nice pre-personnel director background, I take it.</p>	<p style="text-align: right;">Page 12</p> <p>1 A Yes.</p> <p>2 Q Great. All right. So let's talk about your job position with the City of St. Louis. What were your duties and responsibilities as director of personnel?</p> <p>6 A The duties of the director of personnel are defined under Article XVIII of the City Charter, and it is essentially to administer the civil service system. It's a full service human resource function with all the major functional areas of human resource.</p> <p>12 I also, pursuant to that ex-officio, was secretary to the Civil Service Commission, also secretary to the Employees Retirement System, and then pursuant to ordinance, later, secretary to the Firefighters Retirement Plan.</p> <p>17 Q Okay. Great. Let's talk a little bit about, you know, your job as the director of personnel. Give us a flavor for the types of issues you would handle in that capacity.</p> <p>21 A Certainly. I had section managers who were responsible for benefits. The City has a very large benefits program that covers about 10,000 lives. I had responsibility for negotiating all benefits for City employees. We had a</p>

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<p>1 compensation and classification section which puts 2 together the compensation plan and also deals with 3 compensation issues.</p> <p>4 We had an employee relations section 5 which is responsible for processing grievances, 6 drug and alcohol program, family medical leave 7 administration, you know, union negotiations on a 8 departmental level.</p> <p>9 We had a training and organizational 10 development section, which was responsible for, you 11 know, training and organizational interventions at 12 the department level. We had a personnel services 13 section which administered payroll along with the 14 Comptroller's office and maintained personnel 15 records and files and resolved those kinds of 16 administrative issues.</p> <p>17 And we then had the pension systems I 18 spoke of, the Employees Retirement System is a 19 multi-employer, IRS qualified plan which includes, 20 for instance, like the Art Museum, Tower Grove 21 Park, the zoo, et cetera, and then the Firefighters 22 Retirement Plan which, you know, covers all 23 employees, specifically those who were affected by 24 the Court of Appeals' decision which validated the 25 Firefighters Retirement Plan effective, I believe,</p>	<p>1 A No. 2 Q Okay. Was -- well, strike that. 3 You also talked about serving as 4 secretary of the Civil Service Commission. Tell us 5 about that. What were your duties and 6 responsibilities as secretary to the Civil Service 7 Commission?</p> <p>8 A The secretary to the Civil Service 9 Commission schedules meetings for the Commission, 10 ensures that appropriate minutes are taken, makes 11 sure that the agenda -- agenda items are prepared, 12 makes sure that any appeals are -- are reviewed for 13 timeliness, and then scheduled appropriately, 14 either for the written submission process or the 15 formal evidentiary hearing process.</p> <p>16 And then additionally, I contracted 17 with six different hearing officers, all of whom 18 were employment attorneys, three of those were 19 former Circuit Court judges to hear disciplinary 20 matters that went before the Commission.</p> <p>21 Q Okay, great. Thank you. Who is 22 Linda Thomas?</p> <p>23 A Linda Thomas was one of my former 24 deputy directors.</p> <p>25 Q Okay. How many deputy directors did</p>
<p style="text-align: center;">Page 14</p> <p>1 retroactive to February 1, 2013. 2 And I believe that's it.</p> <p>3 Q Okay. Who do you report to? 4 A I have a -- I reported in a --</p> <p>5 Q Or who did you report to, I'm sorry. 6 A Yeah. That's an interesting 7 question. The mayor serves as Chief Executive 8 Officer of the City, provided, however, that there 9 are any exception pursuant to Article XVIII.</p> <p>10 So I had an opinion from prior City 11 Counselor, City -- City Counselor --</p> <p>12 MS. HAMILTON: I'm going to ask you 13 not to go into any attorney-client privilege 14 information.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MS. HAMILTON: Okay.</p> <p>17 Q (BY MR. NORWOOD) Yeah, okay. Well, 18 let me ask it this way. Did you report to the 19 mayor?</p> <p>20 A Not directly.</p> <p>21 Q All right. Did you report to the 22 Comptroller?</p> <p>23 A No.</p> <p>24 Q Did you report to the Board of 25 Aldermen?</p>	<p style="text-align: center;">Page 16</p> <p>1 you have as the director of personnel? 2 A I had one full-time deputy director, 3 Brian Beckelman, and then two part-time deputy 4 directors who were per performance.</p> <p>5 Q And that included Linda Thomas? 6 A Yes.</p> <p>7 Q All right. And what were the duties 8 and responsibilities of Linda Thomas as deputy 9 director?</p> <p>10 A Linda Thomas assisted me in running 11 the day-to-day operations of the City and served as 12 a special resource in particular on the City's ERP 13 project for the last several years, which is the 14 exploration of converting the -- the old mainframe 15 system into a new City-wide integrated computer 16 system.</p> <p>17 Q Now, when we talk about the City of 18 St. Louis and personnel, let's talk about the time 19 that you -- well, let's talk about when you left. 20 How many employees are there in the City of 21 St. Louis system? 22 A We had about, I believe, 6,300 23 authorized positions but maybe about 5,100 24 full-time positions that were filled. In addition 25 to that, there would be varying amounts of per</p>

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<p style="text-align: right;">Page 17</p> <p>1 performance employees and seasonal employees. We 2 called them hourly workers, or per performance.</p> <p>3       <b>Q Okay. And those employees, that</b> 4       <b>number 6,300, 5100, does that -- or did that</b> 5       <b>include full- and part-time employees?</b></p> <p>6       A No. The 6,300 positions were 7 full-time. That excludes the several hundred per 8 performance employees, and depending on any 9 particular year, we could have 300 to 700 of those 10 per performance employees, especially during the 11 summer months.</p> <p>12       <b>Q And explain to us lay people, when</b> 13       <b>you say per performance employee, what is that?</b></p> <p>14       A They are employees who work under 17 15 -- approximately 1,700 hours per year. They have 16 no set schedule per se, and don't receive any 17 benefits except those that would be provided under 18 the ACA Act.</p> <p>19       Meaning that if it's anticipated they 20 would be working at least 30 hours per week for a 21 six-month period of time, they would get the 22 medical insurance benefits.</p> <p>23       <b>Q Okay. All right. Linda Thomas, did</b> 24       <b>she work at the City of St. Louis at the time you</b> 25       <b>retired?</b></p>	<p style="text-align: right;">Page 19</p> <p>1 compensatory time or vacation time for the period 2 of forced leave. If they elect not to take any 3 accrued leave during the period of forced leave and 4 it is found that discipline or dismissal is not 5 warranted, then they are entitled to back pay for 6 that period of time.</p> <p>7       So it is not, in the eyes of the 8 Department of Personnel, property deprivation.</p> <p>9       <b>Q Okay. And one of the reasons you</b> 10       <b>identified as the use of forced leave is when an</b> 11       <b>employee could be a danger to the City. Is that</b> 12       <b>right?</b></p> <p>13       A Yes.</p> <p>14       <b>Q And does that danger necessarily mean</b> 15       <b>physical danger or harm?</b></p> <p>16       A No.</p> <p>17       <b>Q Okay. What are some other examples</b> 18       <b>of the type of danger to the City that might</b> 19       <b>warrant a forced leave?</b></p> <p>20       A It could be use of -- misuse of the 21 City computer system for political reasons. It 22 could be if they have access to confidential 23 information that could be compromised. It could be 24 also used for investigative purposes. So an 25 employment authority would ask to place an employee</p>
<p style="text-align: right;">Page 18</p> <p>1       A Yes, she did.</p> <p>2       <b>Q Okay. Do you know if she's currently</b> 3       <b>employed with the City of St. Louis?</b></p> <p>4       A No, she retired shortly after I did.</p> <p>5       <b>Q Okay. All right. Let's talk about</b> 6       <b>forced leave. Are you familiar with the process of</b> 7       <b>forced leave in the City of St. Louis?</b></p> <p>8       A Yes.</p> <p>9       <b>Q Okay. What is forced leave?</b></p> <p>10       A Forced leave is defined in Department 11 of Personnel Administrative Regulation 117. Forced 12 leave can be requested by an appointing authority, 13 to be approved by me, when an employee presents a 14 potential danger to themselves, to the community, 15 to the workplace, et cetera.</p> <p>16       <b>Q The forced leave process I believe</b> 17       <b>you just stated is governed by St. Louis City</b> 18       <b>Regulation 117?</b></p> <p>19       A Yes.</p> <p>20       <b>Q Is forced leave considered</b> 21       <b>discipline?</b></p> <p>22       A No.</p> <p>23       <b>Q Why do you say that?</b></p> <p>24       A It is not considered discipline 25 because an employee may use any accrued</p>	<p style="text-align: right;">Page 20</p> <p>1       on forced leave pending either an investigation or, 2 in many instances, pending a pre-termination 3 review.</p> <p>4       <b>Q Okay. Why is it important to --</b> 5       <b>well, strike that.</b></p> <p>6       <b>So when a person on forced leave,</b> 7       <b>essentially they are removed from the employment</b> 8       <b>site; is that correct?</b></p> <p>9       A Yes.</p> <p>10       <b>Q Okay. Why is it important if, for</b> 11       <b>instance, there is an investigation, to remove an</b> 12       <b>employee from the employment site?</b></p> <p>13       A We want to maintain the integrity of 14 the invest -- investigation process, and that would 15 include the employee not in any way altering or 16 removing records.</p> <p>17       Similarly, we would not want them 18 discussing the investigation with any co-workers, 19 et cetera. So.</p> <p>20       <b>Q And -- and -- and so when we talk</b> 21       <b>about sensitive financial information, does that</b> 22       <b>vary based upon the position --</b></p> <p>23       A Yes.</p> <p>24       <b>Q -- of the particular -- okay, let</b> 25       <b>me --</b></p>

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<p style="text-align: right;">Page 21</p> <p>1 A I'm sorry. I'll let you finish.      2 Q Just – just so – so that, really      3 for our court reporter's benefit because she's      4 trying to take us both down, so it's better to --      5 A Sorry.      6 Q -- have the -- sort of you're a      7 tennis player, back and forth volley.      8 So, okay. So when we talk about      9 sensitive financial information, does that vary      10 based upon the position?      11 A Yes.      12 Q All right. And let's talk about      13 Mr. Garavaglia. Was he a high level employee?      14 Considered a high level employee at the City of      15 St. Louis?      16 A Yes.      17 Q As a high level employee of the City      18 of St. Louis, did he have access to sensitive      19 financial information?      20 A Yes.      21 Q All right. When forced leave is      22 utilized by an appointing authority, does that      23 automatically lead to some form of discipline?      24 A No.      25 Q Okay. Are you aware of situations</p>	<p style="text-align: right;">Page 23</p> <p>1 A If I received a request to appeal a      2 forced leave, I would call in the administrative      3 assistant to the Civil Service Commission, give it      4 to her, if it were timely, which is within ten days      5 of the notice of forced leave, and then ask him or      6 her to schedule an appeal in front of a hearing      7 officer.      8 Q Okay. And in that context, the      9 appeal of a forced leave, do you have an      10 understanding as to what is being looked at by the      11 hearing officer?      12 A Yes.      13 Q What is that that would be looked at      14 by a hearing officer in that forced leave appeal      15 context?      16 A The hearing officer would examine      17 whether or not there appeared to be sufficient      18 justification to place the employee on forced leave      19 and that was not being done for malicious reasons.      20 Q Okay. When a person is placed on      21 forced leave, what happens with respect to that      22 individual remaining on the work site?      23 A If a person is placed on forced      24 leave, they are notified that they should not      25 return to the work site.</p>
<p style="text-align: right;">Page 22</p> <p>1 where an individual was placed on forced leave      2 pending an investigation and then ultimately the      3 veil was lifted where that individual was permitted      4 to return to work?      5 A Yes.      6 Q Okay. When an individual is placed      7 on forced leave, are there appeals processes that      8 can be utilized --      9 A Yes.      10 Q -- by that -- by that employee?      11 A Yes.      12 Q Okay. And --and as the secretary for      13 the Civil Service Commission, were you involved in      14 those appeals?      15 A Yes.      16 Q All right. Tell us about that      17 process, particularly as it relates to forced      18 leave. The appeals process as related to forced      19 leave.      20 MR. BLANKE: Let me just object just      21 to the form of the question calling for an unduly      22 long narrative response.      23 Q (BY MR. NORWOOD) Okay. And without      24 having an unduly long narrative response, could you      25 tell us about those processes?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Okay. What if they are already at      2 the work site?      3 A If they are currently at the work      4 site, then they would typically be escorted off the      5 work site.      6 Q And why would they be escorted off      7 the work site?      8 A Because if they are being placed on      9 forced leave, the appointing authority, in his or      10 her opinion, believes that they present, you know,      11 that imminent type of threat to the work site or      12 themselves or the community.      13 Q Okay. So are they escorted off the      14 work site at the time they are notified that      15 they're placed on forced leave?      16 A Typically, yes.      17 Q Okay. How long -- well, before I ask      18 that -- strike that.      19 In a situation where an employee is      20 placed on forced leave, who has to approve that      21 forced leave?      22 A The appointing authority has the      23 right to place the employee on forced leave, and      24 then they have to receive permission, in writing,      25 from me within 72 hours.</p>

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<p style="text-align: right;">Page 25</p> <p>1       Q   Okay. Well, you say "from me," 2   meaning the director of personnel? 3       A   Director of personnel. Yes. No 4   longer me, so. 5       Q   No, that's okay. But whoever is 6   serving in that role as director of personnel would 7   have to approve the forced leave. Is that correct? 8       A   Yes. 9       Q   And during the time that you were 10   director of personnel, did you have to approve 11   those forced leaves? 12       A   Yes. 13       Q   Were you considered a rubber stamp of 14   those forced leaves? I mean, in other words, did 15   you just routinely approve forced leaves? 16       A   No. 17       Q   What, in -- in your practice, and 18   based upon your understanding of your 19   responsibility as director of personnel, what would 20   you do to determine whether or not to approve a 21   forced leave? 22       A   I had to look at the totality of the 23   circumstances to see if that serious threshold were 24   met, that they presented, again, a potential threat 25   to themselves or the City or -- or to, you know,</p>	<p style="text-align: right;">Page 27</p> <p>1       A   It could take -- it varies greatly. 2   It could take from a few days, if it were like a 3   blood alcohol test, to sometimes several years if 4   it were a matter that were in the police division, 5   being investigated by the internal affairs division 6   which involve criminal charges. So it did vary 7   widely. 8       Q   Okay. Have there -- when you were 9   director of personnel, were there situations, 10   occasions, where a forced leave would be rescinded 11   and then reinstated? 12       A   Yes. 13       Q   Was there anything out of the 14   ordinary about that process while you were director 15   of personnel? 16       A   It's unusual, but it did occur when 17   more information was forthcoming that necessitated 18   another -- a further investigation. 19       Q   Okay. So if I'm understanding your 20   prior testimony, where, for instance, you said 21   sometimes it could take years, as part of an 22   investigation, as information comes in, does it 23   continue to get extended? 24       A   Yes. 25       Q   Why?</p>
<p style="text-align: right;">Page 26</p> <p>1   the community. 2       Q   And when you say to the City, meaning 3   that if it's a high level employee that has access 4   to sensitive financial information, is that a 5   factor that you would look at to consider whether 6   or not to approve forced leave? 7       A   Yes. 8       Q   When a person is placed on forced 9   leave, how long would that typically last? 10       A   It varies, sir. It depends on the 11   length of the investigation, or when a 12   pre-disciplinary or pre-termination review, you 13   know, would be set. If the forced leave is -- if 14   the appointing authority needs more than 30 days to 15   complete the investigation, then they have to 16   receive my approval of the extension. 17       Q   Okay. And is it common, and 18   particularly in the context of an investigation, 19   for there to be requests for extensions beyond the 20   30 day window you identify? 21       A   Yes. 22       Q   Are you aware of situations -- well, 23   strike that. 24       How long would the typical 25   investigation take?</p>	<p style="text-align: right;">Page 28</p> <p>1       A   Because again, once you get into an 2   investigation, you can find additional matters of 3   concern. Additional allegations can surface. 4       Q   Okay. If additional information 5   comes to light, in your experience as director of 6   personnel, is it prudent to ignore that additional 7   information as it comes in? 8       A   No. 9       Q   Why not? 10       A   Because all of that should be taken 11   into consideration when making the ultimate 12   determination as to whether or not the employee 13   should be set for a pre-disciplinary review or a 14   pre-termination review. 15       Q   Okay. And you identified situations 16   where there was a forced leave, there was an 17   investigation, and ultimately the individual 18   returned to work. Is that right? 19       A   Yes. 20       Q   And would that be -- well, strike 21   that. 22       Under what circumstances would, once 23   that process works, would an individual be returned 24   to work? Give us examples of how that operates. 25       A   We had a situation, for instance,</p>

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<p style="text-align: right;">Page 29</p> <p>1 where an employee was accused of -- of workplace 2 violence, and it was invest -- and so he was placed 3 on forced leave.</p> <p>4 And then upon further review, he was 5 allowed to return because they did not -- the 6 appointing authority did not believe that the 7 threat was truly physical harm.</p> <p>8 But then the employee, upon returning 9 to work, made a very viable threat and made 10 physical contact with a supervisor, so he was 11 placed on forced leave again.</p> <p>12 We've had situations in the police 13 division where the person was placed on forced 14 leave due to a complaint through perhaps the -- a 15 Civilian Oversight Board or through a, you know, a 16 member of the public, and while the particular 17 charge or allegation was found not meritorious, the 18 internal affairs division uncovered other 19 circumstances during its investigation that 20 warranted forced leave again.</p> <p>21 Q Okay. So if I'm understanding you, 22 if there was an investigation and it turns out 23 that, you know, there's not a basis for the next 24 step, which could be discipline, what happens then 25 to that employee?</p>	<p style="text-align: right;">Page 31</p> <p>1 that circumstance? 2 A They are paid for the period that 3 they were off on forced leave.</p> <p>4 Q And what about them returning to 5 work? 6 A They would return to work, you know, 7 upon the expiration -- or the rescission of the 8 forced leave.</p> <p>9 Q Okay. If an individual is ultimately 10 disciplined, and we're going to talk a little bit 11 more about the discipline in that process, are you 12 aware of situations where that disciplined employee 13 appealed that discipline? 14 A Yes. 15 Q And if that employee is successful in 16 that appeal, what happens to the employee? 17 A That depends on the decision of the 18 Civil Service Commission. They can totally 19 overturn the discipline, in which case the employee 20 is made whole in terms of any lost pay and 21 seniority, et cetera, or the Commission retains the 22 right to reduce the discipline if they feel that 23 there, you know, were -- there were some fault on 24 the part of the employee but that the discipline 25 imposed by the appointing authority was excessive.</p>
<p style="text-align: right;">Page 30</p> <p>1 A The person would be returned to work 2 if there was no basis for it.</p> <p>3 Q And what about any utilization of – 4 of time? 5 A Yes, sir. As I addressed previously, 6 if they elected to take any accrued compensatory 7 time or vacation leave, then they've already been 8 paid, you know, for that time. And if the period 9 of forced leave were greater than what they had, 10 they would be restored the difference. 11 As an example, if they had only two 12 weeks of time and the forced leave were for three 13 weeks and they were found not to be at fault, they 14 would get the one week time difference. 15 If they elected not to take any time 16 during this period of forced leave for that three 17 weeks, they would get paid for the entire three 18 weeks.</p> <p>19 Q Okay. All right. Now, what about 20 appeals processes? Are you aware of situations 21 where an individual was placed on forced leave and 22 appealed and ultimately the forced leave was 23 rescinded? 24 A Yes. 25 Q And what happens to the employee in</p>	<p style="text-align: right;">Page 32</p> <p>1 Q Okay. So – so it sounds like the 2 Commission, then, serves as sort of a watchdog to 3 make sure that, if there's discipline of a civil 4 service employee, that it – it's justified, and, 5 therefore, can effectively remove any discipline 6 and send that employee back to work. Is that 7 right? 8 A Yes. 9 Q And restore any lost benefits? 10 A Yes. 11 Q Is it your understanding that an 12 appointing authority needs proof that an individual 13 engaged in misconduct before an individual is 14 placed on forced leave? 15 A No. 16 Q You identify forced leave as a way to 17 remove an employee from the workplace while an 18 investigation is going on. Why is it important to 19 remove an employee from the workplace while the 20 investigation is going on? 21 A Because -- 22 MR. BLANKE: Objection, asked and 23 answered. 24 MS. HAMILTON: You can answer. 25 A Because if the allegations are so</p>

8 (Pages 29 to 32)

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<p>1      serious, in the director's opinion, to meet that      2      threshold of needing to remove the employee from      3      the workplace, it's important for the safety of the      4      City, of the employee, of the co-workers, that      5      those allegations are thoroughly investigated, you      6      know, be -- and that the person is not, you know,      7      presenting a -- presenting a threat.</p> <p>8      So we -- we feel that action is -- is      9      necessary.</p> <p>10     Q (BY MR. NORWOOD) Is an individual      11    who is on forced leave, is their access to the      12    City's computer system restricted in any way?</p> <p>13     A It is supposed to be restricted, yes.</p> <p>14     Q And why is that?</p> <p>15     A Because, again, we would not want the      16    person going in and either damaging or altering or      17    removing records.</p> <p>18     Q Okay. And if an individual, in the      19    case of a forced leave, when that forced leave is      20    removed and the individual returns to work, and      21    that -- that access would be reestablished; is that      22    right?</p> <p>23     A Yes.</p> <p>24     Q Let's talk about pre-termination.      25    What is pre-termination?</p>	<p>1      with respect to the employee returning to work and      2      restoration of any benefits?</p> <p>3      A Again, typically, if a person is      4      placed on -- if they are notified that they are      5      being placed on -- I'm sorry, if they are being set      6      for a pre-termination review, the appointing      7      authority would consult with myself and possibly      8      the law department, and in most cases those people      9      would be placed on forced leave because the      10     employee is put on notice that they may be losing      11     their job.</p> <p>12     So in most instances the employee      13    would be placed on forced leave and then again that      14    process that we discussed would trigger where they      15    could either elect to take time that they have      16    accrued, or not.</p> <p>17     Q And if that happens, though, and it's      18    ultimately determined that, based on those      19    incidents you identified, that there was no basis      20    for discipline, what happens to that employee in      21    terms of returning to work and restoration of      22    benefits?</p> <p>23     A Then the employee is returned to work      24    as -- as quickly as possible, and the employee, if,      25    again, if they took any time, if the period of</p>
Page 34	Page 36
<p>1      A Pre-termination is a process whereby      2      an employee is officially put on notice via letter      3      that the City -- the appointing authority      4      specifically is contemplating the need to dismiss      5      them from their job.</p> <p>6      Q Okay.</p> <p>7      A It's -- it's outlined in      8      Administrative Regulation 117 in -- in terms of how      9      that procedure works and what the necessary      10     elements are.</p> <p>11     Q Does -- well, once a pre-termination      12    notice is sent, does that process lead to      13    termination?</p> <p>14     A It leads to a pre-termination review,      15    which is not a formal hearing, but it is a review      16    where the employee and his or her representative      17    can review the evidence and also respond to any of      18    the allegations and basically fulfill the elements      19    that are required under Administrative Regulation      20    117.</p> <p>21     Q Okay. And are you aware of      22    situations where that process has occurred and the      23    -- and no discipline was issued?</p> <p>24     A Yes.</p> <p>25     Q And if that happens, what happens</p>	<p>1      forced leave were greater than the amount of time      2      they were on forced leave, they would be paid the      3      difference.</p> <p>4      If they were not, if they choose not      5      to take any time, they get paid for that -- that      6      period of forced leave and, you know, any seniority      7      or any holidays, you know, they're made whole      8      essentially under -- under our rules.</p> <p>9      Q But during the forced leave period of      10     time and during the pre-termination period of time,      11    essentially they are on paid leave. Is that right?</p> <p>12     MR. BLANKE: Objection, leading.</p> <p>13     Q (BY MR. NORWOOD) Well, are they on      14    paid leave in that circumstance?</p> <p>15     A It can be either paid or on -- on      16    leave without pay.</p> <p>17     Q Okay. All right. Once a      18    pre-termination -- is it a pre-termination hearing;      19    is that what it's called?</p> <p>20     A We call it a pre-termination review.</p> <p>21     Q Okay. Once a pre-termination review      22    happens, and if there is a determination of a need      23    to impose some form of discipline, can the employee      24    appeal that determination to the Civil Service      25    Commission?</p>

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<p style="text-align: right;">Page 37</p> <p>1 A Yes.</p> <p>2 Q All right. And if that happens, what</p> <p>3 happens at the Civil Service Commission level in</p> <p>4 terms of presentation of evidence, things of that</p> <p>5 sort?</p> <p>6 A What we would do is ensure -- I would</p> <p>7 ensure my assistant and secretary that the appeal</p> <p>8 to the Civil Service Commission was timely, meaning</p> <p>9 within ten days of notification of the results of</p> <p>10 the pre-termination review.</p> <p>11 We would then set the hearing in</p> <p>12 front of one of our hearing officers, and that is</p> <p>13 the -- the evidentiary hearing process is a full</p> <p>14 hearing that complies with the rules for a</p> <p>15 contested hearing. They can cross-examine</p> <p>16 witnesses, et cetera.</p> <p>17 Q So at that level, the employee could</p> <p>18 then present evidence to clear his or her name if</p> <p>19 they feel they have been falsely disciplined; is</p> <p>20 that right?</p> <p>21 MR. BLANKE: Objection, leading.</p> <p>22 Q (BY MR. NORWOOD) Subject to that.</p> <p>23 A Yes.</p> <p>24 Q Are you aware of situations where</p> <p>25 that happened? In other words, there was</p>	<p style="text-align: right;">Page 39</p> <p>1 advising that the Deputy Comptroller, Garavaglia,</p> <p>2 was -- they were concerned that he was involved in</p> <p>3 some serious fiscal issues and was not complying</p> <p>4 with the Comptroller's office's protocols, and that</p> <p>5 they were so serious as to warrant a</p> <p>6 pre-termination review.</p> <p>7 Q (BY MR. NORWOOD) All right. And</p> <p>8 that was by way of a phone call?</p> <p>9 A Yes, sir.</p> <p>10 Q Do you recall when that phone call</p> <p>11 occurred?</p> <p>12 A I don't remember the exact month. I</p> <p>13 know it was a Saturday afternoon at approximately</p> <p>14 1:30 PM.</p> <p>15 Q All right. Is it common for you to</p> <p>16 receive an oral request for forced leave?</p> <p>17 A Yes.</p> <p>18 Q And when you receive an oral request</p> <p>19 for forced leave, do you -- if you agree, does it</p> <p>20 happen at that point in time, once you have</p> <p>21 approved it orally?</p> <p>22 A It still has to be ratified by me via</p> <p>23 the 72 hour written notification. So the</p> <p>24 appointing authority may call me or, again, like</p> <p>25 the law department, to discuss a particular matter</p>
<p style="text-align: right;">Page 38</p> <p>1 discipline following the pre-termination review,</p> <p>2 there was an appeal to the Civil Service</p> <p>3 Commission, and the Civil Service Commission</p> <p>4 determined that the discipline was improper, and</p> <p>5 the individual was returned to work?</p> <p>6 A Yes.</p> <p>7 Q Is it fair to say that this whole</p> <p>8 Civil Service Commission process is a safeguard to</p> <p>9 avoid a situation where a civil service employee is</p> <p>10 wrongfully charged?</p> <p>11 A Yes.</p> <p>12 Q Okay. Let's talk about</p> <p>13 Mr. Garavaglia's forced leave situation. Did you</p> <p>14 have any involvement in that forced leave process?</p> <p>15 A Yes.</p> <p>16 Q Tell us about your involvement in</p> <p>17 that process as it relates to Mr. Garavaglia.</p> <p>18 MR. BLANKE: Objection. Calls for an</p> <p>19 unduly long narrative response.</p> <p>20 Q (BY MR. NORWOOD) Subject to that</p> <p>21 sir, and unless --</p> <p>22 MS. HAMILTON: You can answer.</p> <p>23 A I received a phone call on a Saturday</p> <p>24 -- Saturday afternoon from the appointing authority</p> <p>25 designate -- for the Comptroller, Judy Armstrong,</p>	<p style="text-align: right;">Page 40</p> <p>1 to see if they think this is something that would</p> <p>2 warrant forced leave, given the nature of the</p> <p>3 allegations, and then it's the appointing</p> <p>4 authority's determination as to whether or not to</p> <p>5 proceed.</p> <p>6 And they have 72 hours, if they do</p> <p>7 place the person on forced leave, to get that</p> <p>8 notice to me so that I can review it and look at it</p> <p>9 to see if it warrants, in the director's opinion,</p> <p>10 you know, ratification -- formal -- formal approval</p> <p>11 of that forced leave request.</p> <p>12 Q Okay. Ultimately, did you approve</p> <p>13 the forced leave for Mr. Garavaglia?</p> <p>14 A Yes.</p> <p>15 Q Why did you approve the forced leave</p> <p>16 request for Mr. Garavaglia?</p> <p>17 MR. BLANKE: Well, let me object in</p> <p>18 that the form of the question is a compound</p> <p>19 question because he was relieved -- he was placed</p> <p>20 on forced leave on multiple occasions and the</p> <p>21 question doesn't relate to any particular occasion,</p> <p>22 so it's -- occasion, so it's overly broad as well.</p> <p>23 MR. NORWOOD: Fair objection.</p> <p>24 Q (BY MR. NORWOOD) Why don't we -- you</p> <p>25 have before you a binder of certain exhibits, and</p>

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<p>1 why don't we turn to that binder. And I'm going to      2 direct your attention to tab number 2. It's      3 actually marked Frank Depo Exhibit 2. Could you      4 turn to tab 2?</p> <p>5 A Are you referring, sir, to the July 2      6 letter?</p> <p>7 Q Uh, if --</p> <p>8 A Okay. I have it.</p> <p>9 Q If you look at the bottom, it says      10 Frank Depo Exhibit 2.</p> <p>11 A I have it.</p> <p>12 Q Do you see that?</p> <p>13 A Yes, thank you.</p> <p>14 Q Okay. What is Frank Deposition      15 Exhibit 2?</p> <p>16 A This is a letter from Comptroller      17 Green to me requesting that I approve formally      18 Mr. Garavaglia's forced leave.</p> <p>19 Q Okay. And there is some writing on      20 that document; is that correct?</p> <p>21 A Yes.</p> <p>22 Q Whose writing is that?</p> <p>23 A That's mine.</p> <p>24 Q And could you read what you wrote on      25 – well, whenever you wrote it?</p>	<p>1 apologize.</p> <p>2 MS. HAMILTON: We'll get it for you.</p> <p>3 Q (BY MR. NORWOOD) Okay.</p> <p>4 A Pardon me, I believe, though, it's      5 S-e-w-r-i-g-h-t.</p> <p>6 Q Okay.</p> <p>7 A I may be wrong.</p> <p>8 Q And who is that?</p> <p>9 A She's another high level official in      10 the Comptroller's office.</p> <p>11 Q Okay. So once the forced leave was      12 approved, would that then begin the processes you      13 described about removing an individual from the      14 workplace?</p> <p>15 A Yes.</p> <p>16 Q And restricting that individual's      17 access, in the case of Mr. Garavaglia, access to      18 sensitive financial information?</p> <p>19 A Yes.</p> <p>20 Q Let's turn to Frank Deposition      21 Exhibit 3. Which is the next tab. What is that      22 document?</p> <p>23 A This is the letter from Comptroller      24 Green advising the employee, Mr. Garavaglia, that      25 he is being officially placed on forced leave, and</p>
<p>1 A Yes. It's "Approved RF 7/2/19."</p> <p>2 Q Okay. And did that mean that you      3 would have approved the forced leave on 7/2/19 for      4 Mr. Garavaglia?</p> <p>5 A Yes.</p> <p>6 Q Why did you approve this particular      7 forced leave request for Mr. Garavaglia?</p> <p>8 A I approved this based on the -- the      9 discussion I had just several days before, I      10 believe this is probably a Monday, but several days      11 before with Judy Armstrong and I believe      12 Comptroller was on the phone line but I did not      13 speak with her, and Beth Seright.</p> <p>14 Q Excuse me?</p> <p>15 A I believe Beth Seright might have      16 been on the phone, but the person I spoke to only      17 was Judy Armstrong.</p> <p>18 Q Okay. I just want to make she --      19 she's right now. That last name, who was the other      20 person you identified other than the Comptroller      21 who may have been on?</p> <p>22 A Beth Seright.</p> <p>23 Q Could you spell that for our court      24 reporter?</p> <p>25 A I cannot spell the last name, I</p>	<p>1 of his right to use any accumulated time during      2 that period.</p> <p>3 Q Okay. And just for the record, it      4 looks like you were copied on that letter from      5 Comptroller Darlene Green to Mr. Garavaglia;      6 correct?</p> <p>7 A Yes.</p> <p>8 Q And it looks like Judy Armstrong was      9 also copied on that letter; is that right?</p> <p>10 A Yes.</p> <p>11 Q And she is, Judy Armstrong that is,      12 is designated as the appointing authority?</p> <p>13 A As the appointing authority designee.</p> <p>14 Q Okay. And when you say "appointing      15 authority designee," what does that mean?</p> <p>16 A That's a form authorization, a form      17 that's filed with the Department of Personnel that      18 allows the designee to perform certain types of      19 actions. In the case of Ms. Armstrong, she's      20 authorized to sign off on any and all personnel      21 related matters.</p> <p>22 Q On -- as it relates to which      23 department?</p> <p>24 A To the Comptroller's office.</p> <p>25 Q Okay. And actually you remind me.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Let me -- let us, meaning whoever watches this 2 video, reads this transcript, get a sense as to 3 these departments within the City. How many City 4 departments are there?</p> <p>5 A Over thirty major departments. And 6 then we have cost centers within them with various 7 appointing authorities, but over thirty major 8 departments.</p> <p>9 Q Okay. And one of those departments 10 would be the Comptroller's office?</p> <p>11 A Yes.</p> <p>12 Q All right. Would the mayor's office 13 be considered a department?</p> <p>14 A No.</p> <p>15 Q Okay.</p> <p>16 A May I clarify? Not in terms of 17 personnel related issues. Because all of the 18 Comptroller's employees, every single one is a 19 civil service employee. The mayor, her department 20 directors and the mayor's staff are all excepted 21 positions which are not within the civil service 22 system or under my prior authority as director.</p> <p>23 Q So certain departments fit within the 24 umbrella of the mayor's office; is that right?</p> <p>25 A Only the department heads who are</p>	<p style="text-align: right;">Page 47</p> <p>1 to withdraw her request of forced leave for 2 Mr. Garavaglia.</p> <p>3 Q Okay. I think you said "the next 4 day." Let's put it in context. If you go back and 5 look at the prior exhibit, that exhibit and the 6 prior set of exhibits on July 2 --</p> <p>7 A Oh, I'm sorry, yeah, I looked at the 8 date wrong.</p> <p>9 Q -- July 2, 2019, was the original 10 forced leave. Is that right?</p> <p>11 A Yes. I misread the -- the date.</p> <p>12 Q That's okay. I just want to make 13 sure the record is clear.</p> <p>14 So the next document, Frank's 15 Deposition Exhibit 4, for the record, is a letter 16 dated July 18, 2019. Is that correct?</p> <p>17 A Yes.</p> <p>18 Q And is that a letter to you from 19 Comptroller Darlene Green?</p> <p>20 A Yes, it is.</p> <p>21 Q And what is that letter?</p> <p>22 A Are you referring, sir, to Exhibit 4 again?</p> <p>23 Q Exhibit 4, yes.</p> <p>24 A Yes, that's a letter from the</p>
<p style="text-align: right;">Page 46</p> <p>1 appointed directly by her are what they're known as 2 excepted positions. For instance, the City 3 Counselor, or the director of -- of the health 4 department, et cetera.</p> <p>5 Q Okay. What about the Comptroller's 6 office which you said is a separate department. 7 Does that fit under the mayor's umbrella?</p> <p>8 A No.</p> <p>9 Q And that is considered a separate arm 10 of the City?</p> <p>11 A It's not considered separate. The 12 Comptroller herself is an elected official but all 13 of her employees are civil service positions and 14 ultimately governed in personnel matters by the 15 Department of Personnel and Civil Service 16 Commission.</p> <p>17 Q But the people within her department 18 ultimately would report to her as an elected 19 official?</p> <p>20 A Yes, as the appointing authority.</p> <p>21 Q As the appointing authority. Okay. Let's turn to tab number 4, Frank Depo Exhibit 4. What is that document?</p> <p>22 A That is a letter from Comptroller 23 Green the next day asking that she would like</p>	<p style="text-align: right;">Page 48</p> <p>1 Comptroller advising me that she would like to 2 officially withdraw the request for forced leave 3 for Mr. Garavaglia.</p> <p>4 Q All right. And it looks like 5 Mr. Garavaglia was copied on that document. Is 6 that right?</p> <p>7 A Yes.</p> <p>8 Q It looks like Judy Armstrong, as 9 appointing authority, was -- or appointing 10 authority designee was copied on that document; correct?</p> <p>11 A Yes.</p> <p>12 Q And it also identifies a person, 13 Nancy Kistler, Deputy City Counselor; is that 14 correct?</p> <p>15 A Yes.</p> <p>16 Q Is it your understanding that Nancy 17 Kistler had involvement as Deputy City Counselor in 18 some of the processes involved in this --</p> <p>19 A Yes.</p> <p>20 Q -- some of the processes involved in 21 this case as it relates to Mr. Garavaglia?</p> <p>22 A Yes, sir.</p> <p>23 Q Let's go to Frank Deposition Exhibit 24 5. And what is Frank Deposition Exhibit 5?</p>

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<p style="text-align: right;">Page 49</p> <p>1 A This is a request from Comptroller 2 Green dated July 18, asking that I place 3 Mr. Garavaglia -- or approve Mr. Garavaglia's 4 forced leave for serious fiscal improprieties. 5 Q Okay. Did you ultimately approve 6 that request? 7 A Yes, I did. 8 Q All right. Let's turn to the next 9 tab, Frank Depo Exhibit 6. What is that document? 10 A This is a copy of my approval of the 11 request for a forced leave for Mr. Garavaglia dated 12 July 18, 2019. 13 Q Okay. And there is some writing on 14 that document; is that correct? 15 A Yes. 16 Q And whose writing is that? 17 A That is mine. 18 Q And for the record, could you read 19 what you wrote on July 18, 2019? 20 A "Approved RF 7/18/19." 21 Q All right. And why did you approve 22 this request for forced leave? 23 A I approved this request for 24 essentially the same reasons, which were the 25 allegations made by Comptroller that -- and that</p>	<p style="text-align: right;">Page 51</p> <p>1 know, a number of employees, subordinate employees. 2 He was a -- one of the second highest ranking 3 people in the office of the Comptroller who is the 4 Chief Financial Officer for the City, so. 5 Q Okay. Let's turn to the next tab, 6 which is tab -- tab 7. And that appears to be a 7 letter dated July 18, 2019, to Mr. Garavaglia from 8 Comptroller Darlene Green. Is that correct? 9 A Yes. 10 Q And did this reference the forced 11 leave that you approved on July 18, 2019? 12 A Yes. 13 Q And were you also copied on this 14 particular communication? 15 A Yes. 16 Q All right. Let's go to the next 17 document, Frank Deposition Exhibit 8, tab 8. And 18 what is that item? 19 A I need to read it here first. 20 Q Yeah, take your time. 21 A This is a -- an email from Deputy 22 City Counselor -- I'm sorry, deputy director of 23 personnel, Linda Thomas, to myself explaining -- or 24 documenting for me a conversation she had with 25 Comptroller regarding the process for rescinding</p>
<p style="text-align: right;">Page 50</p> <p>1 they were -- they were investigating serious fiscal 2 improprieties and some issues of -- related to that 3 from Mr. Garavaglia. 4 Q Okay. And would an investigation 5 into serious fiscal improprieties justify a forced 6 leave? 7 A Yes. 8 Q For the reasons you've already 9 stated? 10 A Yes. 11 Q Does it become more important when 12 you have an individual who is a high level employee 13 of the City? 14 A Yes. 15 Q Why? 16 A Because of the magnitude of their 17 decisions. They have a greater impact to 18 decision-making, and they also have, typically, 19 involvement in contracts and with vendors and the 20 magnitude of their authority is greater. So it's 21 amplified. 22 Q What about their supervisory 23 authority? 24 A That's certainly another issue, they 25 -- being as high as Mr. Garavaglia was, he had, you</p>	<p style="text-align: right;">Page 52</p> <p>1 and reinstituting forced leave under the provisions 2 of Administrative Regulation 117. 3 Q Okay. And -- and just for the 4 record, let's -- let's read this into the record. 5 The email to you from Linda Thomas -- 6 who was your deputy at the time; correct? 7 A Yes. 8 Q The email from Linda Thomas to you is 9 dated Wednesday, July 17, 2019, at 2:35 PM. Is 10 that correct? 11 A Yes. 12 Q All right. And -- 13 MS. HAMILTON: It's 2:33. 14 A 2:33. 15 Q (BY MR. NORWOOD) I'm sorry. 16 Actually, it looks like there are two emails; is that 17 right? 18 MS. HAMILTON: Yes. 19 Q (BY MR. NORWOOD) I mean, within the 20 one -- it looks like an email string; is that -- 21 A It is, yeah. Thank you. 22 Q Okay. All right. So -- so the 23 second, or the top of the string is an email from 24 you to Linda Thomas; is that correct? 25 A Yes.</p>

13 (Pages 49 to 52)

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<p>1       Q   And that appears to have been -- and 2   that email is dated Wednesday, July 17, 2019, at 3   2:35 PM; is that correct? 4       A   Yes. 5       Q   And that was in response, it appears, 6   to an email that Linda Thomas sent to you on 7   Wednesday, July 17, 2019, at 2:33 PM. Is that 8   correct? 9       A   Yes. 10      Q   Okay. And let's read what she wrote 11   to you at 2:33 PM on July 17, 2019. It says, 12   quote, (Quote as read): 13           Rick, I told the Comptroller to 14           withdraw her request for forced leave 15           on JG. 16           Let me pause there, and do you know 17   who JG was? 18       A   Yes. 19       Q   Who was that? 20       A   Mr. Garavaglia. 21       Q   Okay. Reading further it says, 22   quote, (Quote as read): 23           All she has to do is for you to 24           withdraw the request and she has to 25           give him a copy and then give back</p>	<p>1       A   Yes. 2       Q   It goes further, says, quote, (Quote 3   as read): 4           The reason for that first leave would 5           be he has access to a lot of 6           confidential files and computer 7           systems and the investigation would 8           lead to disciplinary action up to, it 9           says, an, a-n, including termination. 10          You see that? 11       A   Yes. 12       Q   And is that -- 13           MS. HAMILTON: And I would just say 14           it says "the forced leave" instead of the first 15           leave. 16           MR. NORWOOD: Did I say first leave? 17           MS. HAMILTON: Yes, sir. 18           MR. NORWOOD: Okay. Well, let me 19           read it so we get it right in the record. 20       Q   (BY MR. NORWOOD) (Quote as read): 21           The reason for the forced leave would 22           be he has access to a lot of 23           confidential files and computer 24           systems and the investigation would 25           lead to disciplinary action up to an,</p>
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<p>1       any of this time he has used. 2       Do you see that? 3       A   Yes. 4       Q   All right. And is that your 5   understanding as to what the proper procedure 6   should have been in order -- 7       A   Yes. I'm sorry, didn't mean to -- 8       Q   That's okay. 9       A   Pardon me. 10       Q   Is it your understanding that that 11   was the proper procedure to be used with respect to 12   rescinding the original forced leave and 13   reinstituting a new forced leave? 14       A   Yes. 15       Q   Reading further, it says, quote, 16   (Quote as read): 17           Then I told her she could send you a 18           letter requesting forced leave again, 19           give him a copy, and tell him he is 20           being put on forced leave pending an 21           investigation. 22           Is that a fair reading? 23       A   Yes. 24       Q   And is that an accurate description 25   of what the proper procedure would be?</p>	<p>1       a-n, including termination. 2       Is that a fair reading of what's I 3   – what's in the communication? 4       A   Yes. 5       Q   And is that consistent with your 6   assessment of the reason why you approved the 7   second forced leave and the first forced leave in 8   the first place? 9       A   Yes. 10       Q   Okay. Now, let's go to Frank 11   Deposition Exhibit 9. What is Frank Deposition 12   Exhibit 9? 13       A   This is a letter from Comptroller 14   stating that she would like to officially withdraw 15   her request for forced leave for Mr. Garavaglia. 16       Q   And it's dated August 28, 2019. Is 17   that correct? 18       A   Yes. 19       Q   And it looks like Mr. Garavaglia, 20   Judy Armstrong, Nancy Kistler were also copied on 21   this letter from Comptroller Darlene Green. Is 22   that right? 23       A   Yes. 24       Q   All right. Let's go to the next 25   item, number 10. And what is this item number 10?</p>

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<p style="text-align: right;">Page 57</p> <p>1 A This is a letter from Comptroller 2 notifying Mr. Garavaglia that he is being set for a 3 pre-termination review.</p> <p>4 Q Okay. And –</p> <p>5 A It says "hearing," pardon me, but 6 actually it's a review.</p> <p>7 Q Is the -- the nomenclature is review 8 as opposed to hearing; correct?</p> <p>9 A Yes.</p> <p>10 Q And it's dated August 28, 2019. Is 11 that correct?</p> <p>12 A Yes.</p> <p>13 Q Now, it lists a number of bases for 14 the pre-termination review. And the first one, let 15 me read that into the record because I have a few 16 questions to ask you about that.</p> <p>17 It says, quote, (Quote as read): 18 You have improperly signed multiple 19 City contracts and contract 20 extensions, including automatic 21 extensions without legal 22 authorization to do so, putting the 23 City at risk, dating back to 2019. 24 Do you see that? 25 MS. HAMILTON: 2009.</p>	<p style="text-align: right;">Page 59</p> <p>1 improprieties to be ignored in the context of that 2 investigation?</p> <p>3 A No.</p> <p>4 Q Why not?</p> <p>5 A Because they're still relevant to the 6 overall performance of the employee, you know, in 7 his or her position and whether or not they, um, 8 you know, are fit for continued service.</p> <p>9 Q Okay. And there are a listing of 10 other charges on that page. Is that correct?</p> <p>11 A Yes.</p> <p>12 Q The next page, there is a reference 13 to certain provisions of the City of St. Louis 14 Department of Personnel, Administrative and Joint 15 Regulations, Employee Code of Conduct; you see 16 that?</p> <p>17 A Yes.</p> <p>18 Q If we look at the next to last 19 paragraph, and I'll read that one into the record, 20 it says, quote, (Quote as read): 21 The purpose of this pre-termination 22 hearing is to allow you the 23 opportunity to respond to the 24 charges, review any evidence against 25 you, present any evidence you have on</p>
<p style="text-align: right;">Page 58</p> <p>1 Q (BY MR. NORWOOD) I'm sorry, 2009. 2 A Yes, I see that.</p> <p>3 Q Dating back to 2009; correct?</p> <p>4 A Yes.</p> <p>5 Q Now, if we unpack that, would the 6 improper signing of multiple City contracts and 7 contract extensions, would that be a grounds for 8 discipline?</p> <p>9 A Yes.</p> <p>10 Q Why?</p> <p>11 A That is a very serious charge under 12 both the -- the Code of Ethics and it would be an 13 exception to progressive discipline under 14 Administrative Regulation 117.</p> <p>15 Q Okay. Does it matter that the – 16 that any of the contracts that might be referenced 17 here date back to 2009?</p> <p>18 MR. BLANKE: Well, let me object to 19 the form of the question as to whether it matters, 20 that --</p> <p>21 MR. NORWOOD: Well, let me say -- let 22 me withdraw that question, let me withdraw that 23 question, and let me ask it another way.</p> <p>24 Q (BY MR. NORWOOD) If an investigation 25 determines past improprieties, are those past</p>	<p style="text-align: right;">Page 60</p> <p>1 your behalf, including any mitigating 2 circumstances that may be involved. 3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And is that the purpose of that 6 process, this pre-termination review?</p> <p>7 A Yes.</p> <p>8 Q And in this case, did Mr. Garavaglia 9 have the opportunity to respond to the charges by 10 way of this process?</p> <p>11 A Yes.</p> <p>12 Q Do you know if he undertook that 13 opportunity?</p> <p>14 A I can't recall.</p> <p>15 Q Okay. Do you recall -- well, strike 16 that.</p> <p>17 Do you know what ultimately happened 18 to Mr. Jim Garavaglia as it relates to his 19 employment with the City of St. Louis?</p> <p>20 A My belief is that he retired.</p> <p>21 Q All right. All right. And -- and 22 we'll -- we have some documents and we'll talk 23 about that in a minute.</p> <p>24 And so as you sit here today you 25 don't know if in fact he took advantage of the</p>

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<p style="text-align: center;">Page 61</p> <p>1 opportunity to respond to the charges, as you sit 2 here today?</p> <p>3 A My recollection is I do not remember 4 seeing a, you know, a summary of a pre-termination 5 review on Mr. Garavaglia.</p> <p>6 Q Okay. And as you sit here today, you 7 don't know if he took advantage of the opportunity 8 to review any evidence that might be presented 9 against him as it was delineated in the charges set 10 forth in -- on page 1.</p> <p>11 A Yeah, I --</p> <p>12 MR. BLANKE: Objection, asked and 13 answered, and leading.</p> <p>14 MS. HAMILTON: You can answer.</p> <p>15 A I can't say with certainty. I don't 16 believe so, but I can't say with certainty.</p> <p>17 Q (BY MR. NORWOOD) Okay. And -- and 18 at the pre-termination review, did Mr. Garavaglia 19 have the right to have counsel there?</p> <p>20 A Yes.</p> <p>21 Q All right. Well, and -- and would 22 that have provided him and his counsel with an 23 opportunity to review that evidence and refute any 24 charges?</p> <p>25 MR. BLANKE: Objection as to the form</p>	<p style="text-align: center;">Page 63</p> <p>1 for the same reasons as set forth 2 above, repeating this conduct for the 3 third separate occasion, 4 necessitating Plaintiff multiple -- 5 I'm sorry, Plaintiff filing multiple 6 appeals to the Civil Service 7 Commission. 8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And then paragraph number 17 says, 11 quote, (Quote as read): 12 The City's director of personnel 13 approved the forced leave each time, 14 knowing that there was no supportable 15 basis for each forced leave decision 16 and/or conspired with Defendant Green 17 to discriminate against Plaintiff as 18 alleged herein. 19 Do you see that?</p> <p>20 A I do.</p> <p>21 Q All right. Did you approve -- let's 22 focus on the first forced leave. July 2, 2019. 23 Did you approve the July 2, 2019, forced leave 24 request with -- without any supportable basis?</p> <p>25 A No, I did not.</p>
<p style="text-align: center;">Page 62</p> <p>1 of the question regarding the use of the word 2 "would" rather than "should," whether it would or 3 not calls for speculation.</p> <p>4 MS. HAMILTON: You can answer.</p> <p>5 A Yes.</p> <p>6 Q (BY MR. NORWOOD) All right. I want 7 to backtrack a bit, and I hate to jump around, but 8 let's take a look at tab 1. And while you're -- 9 and it's marked Frank Deposition Exhibit 1. And 10 while folks are locating that tab, for the record, 11 that exhibit, Frank Depo Exhibit 1, is a document 12 entitled Second Amended Complaint for Employment 13 Discrimination filed by Mr. James Garavaglia 14 against the City of St. Louis and Darlene Green. 15 Do you see that document?</p> <p>16 A Yes, I do.</p> <p>17 Q All right. And let me direct your 18 attention to paragraph -- I'm sorry. Page 4. Do 19 you have that page, sir?</p> <p>20 A I do.</p> <p>21 Q Okay. And let me read some of the 22 language. Let's start at paragraph 16. 23 It says, quote, (Quote as read): 24 Defendant Green then withdrew 25 Plaintiff's forced leave yet again</p>	<p style="text-align: center;">Page 64</p> <p>1 Q Did you approve the July 2, 2019, 2 forced leave request because you were in some 3 conspiracy with Comptroller Green to discriminate 4 against Plaintiff?</p> <p>5 MR. BLANKE: Let me object, calls for 6 legal conclusions on the part of the witness.</p> <p>7 MS. HAMILTON: You can --</p> <p>8 Q (BY MR. NORWOOD) Well, your 9 understanding of conspiracy. Were you huddling up 10 with Comptroller Green in an effort to discriminate 11 against Mr. Garavaglia based on race, sex, age?</p> <p>12 A No.</p> <p>13 MR. BLANKE: Same objection.</p> <p>14 MR. NORWOOD: I'm sorry?</p> <p>15 MR. BLANKE: Same objection.</p> <p>16 MR. NORWOOD: And I just want to make 17 sure the witness --</p> <p>18 MR. BLANKE: He said no.</p> <p>19 MR. NORWOOD: Well, I to make sure 20 she got that.</p> <p>21 THE WITNESS: I'll slow down.</p> <p>22 MR. NORWOOD: You can say what he 23 said, but let's let him say it again.</p> <p>24 Q (BY MR. NORWOOD) Could you answer 25 that one?</p>

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<p>1       A   No.</p> <p>2       <b>Q   What's your view of that allegation</b></p> <p>3       <b>directed to -- against you personally?</b></p> <p>4            MR. BLANKE: Objection as to</p> <p>5        relevance.</p> <p>6            MS. HAMILTON: You can answer.</p> <p>7        A   I only have -- first I had only one</p> <p>8        conversation with Comptroller herself, as I said in</p> <p>9        my original conversation with Judy Armstrong on the</p> <p>10      Saturday before I approved the forced leave. I did</p> <p>11      not speak with Comptroller. I only spoke to</p> <p>12      Comptroller once and that was after this matter,</p> <p>13      you know, had occurred about Mr. Garavaglia.</p> <p>14      And secondly, in terms of conspiracy</p> <p>15      to discriminate, I only met Mr. Garavaglia perhaps</p> <p>16      once. So I had very, very little knowledge of him</p> <p>17      other than he was a nice guy.</p> <p>18      <b>Q   (BY MR. NORWOOD) Well, and so did</b></p> <p>19      <b>you have any reason to conspire against him based</b></p> <p>20      <b>on his age or sex or race or anything like that?</b></p> <p>21      A   No. I think we're sort of in the</p> <p>22      same group there.</p> <p>23      <b>Q   Got it. And for the record, what</b></p> <p>24      <b>group is that?</b></p> <p>25      A   I'm a white male who is 61 years of</p>	<p>1       <b>salary increase from where he was being</b></p> <p>2       <b>compensated; is that right?</b></p> <p>3            A   Yes. Or, with the proviso that he</p> <p>4        would also go to the minimum of the range. So this</p> <p>5        was not the case I believe here, but sometimes</p> <p>6        there is such a large gap between pay ranges that</p> <p>7        it might automatically result in a 7 percent, et</p> <p>8        cetera.</p> <p>9            <b>Q   Right.</b></p> <p>10       A   But -- but not -- not in this case to</p> <p>11       the best of my recollection.</p> <p>12       <b>Q   Okay. So he would have been entitled</b></p> <p>13       <b>to a 5 percent salary increase; is that right?</b></p> <p>14       A   Yes.</p> <p>15       <b>Q   And because of that, why -- well,</b></p> <p>16       <b>strike that.</b></p> <p>17       <b>So why would Comptroller Green have</b></p> <p>18       <b>to send this to you as it relates to his</b></p> <p>19       <b>compensation?</b></p> <p>20        MR. BLANKE: Objection, asked and</p> <p>21       answered.</p> <p>22        MS. HAMILTON: You can answer.</p> <p>23        A   In our system, the compensation</p> <p>24       ordinance is the legal document that determines how</p> <p>25       we pay all of our civil service employees, and even</p>
Page 66	Page 68
<p>1       age.</p> <p>2       <b>Q   Okay. All right. Let's go to tab --</b></p> <p>3       <b>Exhibit tab 11, Frank Deposition Exhibit 11. Take</b></p> <p>4       <b>your time, if you could, just take a look at the</b></p> <p>5       <b>exhibit which, for the record, there are two pages,</b></p> <p>6       <b>and it's Bates stamped STL000707 on the first page,</b></p> <p>7       <b>and the second page is STL000708, for the record.</b></p> <p>8       <b>First of all, what is the first page</b></p> <p>9       <b>of Frank Depo Exhibit 11?</b></p> <p>10       A   This is a letter from Comptroller</p> <p>11       Green asking me to give a -- to approve, pursuant</p> <p>12       to the compensation ordinance, a non-standard</p> <p>13       increase for Mr. Garavaglia upon his promotion to</p> <p>14       Deputy Comptroller.</p> <p>15       The compensation ordinance provides</p> <p>16       that a person receive a 5 percent normally upon</p> <p>17       promotion; although, the appointing authority can</p> <p>18       ask for approval from the director of personnel to</p> <p>19       grant a higher, non-standard promotional increase</p> <p>20       in certain circumstances.</p> <p>21       <b>Q   Okay. Let's unpack that, if we</b></p> <p>22       <b>could.</b></p> <p>23       <b>In the normal course, based upon what</b></p> <p>24       <b>you understood, him being promoted to deputy</b></p> <p>25       <b>Comptroller would have entitled him to a 5 percent</b></p>	<p>1       excepted employees, and it gives discretion to the</p> <p>2       director of personnel alone to approve non-standard</p> <p>3       increases.</p> <p>4       <b>Q   (BY MR. NORWOOD) Okay. And -- and</b></p> <p>5       <b>the non-standard, if I'm understanding you, and you</b></p> <p>6       <b>correct me if I'm wrong, the non-standard increases</b></p> <p>7       <b>would be the increases beyond the document that</b></p> <p>8       <b>you've identified; is that correct?</b></p> <p>9       A   Yes, sir.</p> <p>10       <b>Q   All right. And do you know why</b></p> <p>11       <b>Comptroller Green requested a 5 percent salary</b></p> <p>12       <b>increase above what he would normally be entitled</b></p> <p>13       <b>to?</b></p> <p>14       A   My understanding was because he was</p> <p>15       moving to such a high level --</p> <p>16       <b>MR. BLANKE: Objection, it's</b></p> <p>17       <b>non-responsive. The question was whether you know</b></p> <p>18       <b>why.</b></p> <p>19       <b>THE WITNESS: Whether I know why?</b></p> <p>20       <b>MR. NORWOOD: Well, and he was</b></p> <p>21       <b>answering whether he knew why.</b></p> <p>22       <b>MS. HAMILTON: You can -- you can</b></p> <p>23       <b>continue.</b></p> <p>24       <b>MR. BLANKE: I might object to that</b></p> <p>25       <b>one.</b></p>

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<p>1           MS. HAMILTON: He's objecting. You 2 can continue.</p> <p>3           A My understanding was that --</p> <p>4           MR. BLANKE: Objection, 5 non-responsive. He's not us asking what your 6 understanding was.</p> <p>7           MS. HAMILTON: Your objection is 8 noted, Counsel. You can answer.</p> <p>9           MR. BLANKE: I understand. I just 10 wanted to object to it again.</p> <p>11          A My understanding from -- from the 12 Comptroller's office was because he was moving to a 13 very high level position.</p> <p>14          <b>Q (BY MR. NORWOOD) Okay. And do you 15 know if she was required to add another 5 percent?</b></p> <p>16          A No.</p> <p>17          <b>Q Do you know why, if Comptroller Green 18 was discriminating against him based on his race or 19 sex or age, why she would recommend a 5 percent 20 increase over and above what he would normally be 21 entitled to?</b></p> <p>22          MR. BLANKE: Objection, not supported 23 by the evidence, and calls for speculation.</p> <p>24          MS. HAMILTON: You can answer.</p> <p>25          A No.</p>	<p>1           <b>Q All right. But all of that had to be 2 approved by you.</b></p> <p>3           A Yes.</p> <p>4           <b>Q All right. Let's go to the next page 5 of that Frank Depo Exhibit 11 which is a letter -- 6 it appears to be a letter -- well, strike that. 7 What is that page of the exhibit?</b></p> <p>8          <b>For the record -</b></p> <p>9           <b>(Overalking - inaudible.)</b></p> <p>10          MR. BLANKE: What page are we on?</p> <p>11          MR. NORWOOD: For the record --</p> <p>12          MR. SCHMITZ: You said "the next 13 page." What page are you on?</p> <p>14          MS. HAMILTON: We're on 11.</p> <p>15          MR. NORWOOD: The second page of 16 Exhibit 11 and the Bates stamp page number, for the 17 record, is STL000708.</p> <p>18          MR. BLANKE: So you're one back.</p> <p>19          MS. HAMILTON: No, you're on the 20 correct page.</p> <p>21          MR. BLANKE: Oh, okay, sorry.</p> <p>22          A This is my response, sir, to 23 Comptroller Green approving her request for a 24 non-standard 10 -- approximately 10 percent 25 increase for Mr. Garavaglia upon his promotion to</p>
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<p>1          <b>Q (BY MR. NORWOOD) Let's go to the 2 next page of Frank Deposition Exhibit 11. What is 3 that?</b></p> <p>4          A This is a letter to Comptroller Green 5 from me saying that based upon her recommendation 6 and in accordance with the compensation ordinance, 7 I am approving her request.</p> <p>8          <b>Q Okay. And just so that my record is 9 -- our record is square, the first letter is dated 10 May 20, 2016, from Darlene Green to you; Is that 11 correct?</b></p> <p>12          A Yes.</p> <p>13          <b>Q All right. And is that when he was 14 promoted to Deputy Comptroller?</b></p> <p>15          A Actually, the date I believe, sir, 16 says that his promotional date would be as of 17 May 13, 2016.</p> <p>18          <b>Q Okay. So -- so would that suggest 19 then that he was actually promoted on May 13, 2016?</b></p> <p>20          A Yes. It would suggest that.</p> <p>21          <b>Q All right. And the request, which 22 would have been made May 20, 2016, would have meant 23 that his effective salary increase would start as 24 of his promotion date. Is that right?</b></p> <p>25          A Yes.</p>	<p>1          Deputy Comptroller.</p> <p>2          <b>Q (BY MR. NORWOOD) Okay. And for the 3 record, the letter is dated June 6, 2016. Is that 4 correct?</b></p> <p>5          A Yes.</p> <p>6          <b>Q Okay. Let's read the second 7 paragraph of that letter. And before we do that, 8 it looks like it was CC'd to Terry -- who is that? 9 How do you pronounced that last name?</b></p> <p>10          A Terry Dabrowski.</p> <p>11          <b>Q Dabrowski, okay. And who is Terry 12 Dabrowski?</b></p> <p>13          A She was the manager of the personnel 14 services section of the Department of Personnel. 15 She's since passed away.</p> <p>16          <b>Q Okay. Second paragraph says quote, 17 (Quote as read):</b></p> <p>18           <b>Based on your recommendation, please 19 be advised that, in accordance with 20 Section 6(a)(1), I am hereby 21 approving your request. 22 Is that right?</b></p> <p>23          A Yes.</p> <p>24          <b>Q And so you did approve the request; 25 right?</b></p>

18 (Pages 69 to 72)

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<p>1 A Yes.</p> <p>2 Q All right. And then it goes further 3 and says, quote, (Quote as read):</p> <p>4 Therefore, upon Mr. Garavaglia's 5 appointment to the position of Deputy 6 Comptroller, in parens it has 7 (01488-21M-1).</p> <p>8 What is that number?</p> <p>9 A That number refers to his actual 10 position and pay grade, the M meaning that he is a 11 management person, the 1 meaning that he's excluded 12 from overtime provisions of the FLSA.</p> <p>13 Q Okay. And continuing on, it says, 14 (Quote as read):</p> <p>15 His salary shall be \$4,867 biweekly 16 (step 15), approximately 10 percent. 17 Is that correct?</p> <p>18 A Yes.</p> <p>19 Q What is step 15? What does that 20 mean?</p> <p>21 A There are 30 steps in the current 22 compensation ordinance. Each step is approximately 23 1.5 percent higher than the next, and so in order 24 to make sure that the payroll office and the 25 Comptroller's office, we set a salary correctly, we</p>	<p>1 Q (BY MR. NORWOOD) Okay. Mr. Frank, I 2 believe you indicated that you wanted to clarify 3 the record about the call you had with Judy 4 Armstrong as it related to the first forced leave? 5 You wanted to clarify something on that point?</p> <p>6 A Yes, thank you. Um, I indicated 7 that, um, that -- and I did not speak to the 8 Comptroller directly. I believe that Judy was the 9 only person that I -- I spoke to other than Chana, 10 who made the connection of -- of the phone for me. 11 So I thought -- I thought that they 12 said Beth was on the line. I did not speak to her 13 but I'm not sure. So I just wanted to be clear 14 about that. I'm sorry.</p> <p>15 Q Okay. Thank you, sir, for clarifying 16 that.</p> <p>17 Who appointed you to your position as 18 director of personnel for the City of St. Louis?</p> <p>19 A Former Mayor Slay, Francis Slay.</p> <p>20 Q Okay. Do you know if -- if Ms. Green 21 had any role in that process?</p> <p>22 A No, she did not.</p> <p>23 Q Have there been occasions where 24 personnel-related requests have come from the 25 Comptroller's office to your office that you</p>
<p>1 put in the exact step and pay for their information 2 when we make such approvals.</p> <p>3 Q Okay. Did you have to approve this 4 request?</p> <p>5 A Pardon me?</p> <p>6 Q Did you have to approve this request?</p> <p>7 A No, it's discretionary.</p> <p>8 Q Okay. And why did you approve this 9 request?</p> <p>10 A Based upon the recommendation of my 11 classification compensation section, as well as my 12 personal review of his movement to such a high 13 level position, I felt it warranted a non-standard 14 increase.</p> <p>15 Q And his supervisor was recommending 16 it. Was that a factor as well?</p> <p>17 A Absolutely.</p> <p>18 Q Okay. Let's go to the next -- well, 19 why don't we take a short break, if we could, if 20 that's okay?</p> <p>21 THE VIDEOGRAPHER: Time is 11:12 AM, 22 we are off the record.</p> <p>23 (Off the record.)</p> <p>24 THE VIDEOGRAPHER: The time is 11:41, 25 we are back on the record.</p>	<p>1 denied?</p> <p>2 A Yes.</p> <p>3 Q What -- what type of -- obviously 4 without specifying the particular personnel, but 5 what kind of requests do you recall --</p> <p>6 A They were --</p> <p>7 Q -- denying coming from the 8 Comptroller's office?</p> <p>9 A I remember requests for non-standard 10 promotional increases. I remember requests for 11 special performance increases, and I also remember 12 requests for developing new job classes, and I 13 remember requests for reclassifications. All of 14 which, from time to time, I've denied.</p> <p>15 Q And why -- without getting specific, 16 why did you deny those various requests from the 17 Comptroller's office?</p> <p>18 A Because those requests did not have 19 merit based on my assessment and the 20 recommendations of my classification and 21 compensation unit.</p> <p>22 Q Okay. So if anyone were to suggest 23 that you were a rubber stamp for the Comptroller's 24 office, would there be any truth to that?</p> <p>25 A None.</p>
	19 (Pages 73 to 76)

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<p style="text-align: right;">Page 77</p> <p>1       Q   All right. Let's turn to Frank Depo 2   Exhibit 12, if we could? What is Frank Depo 3   Exhibit 12? Well, strike that. 4           For the record, Frank Deposition 5   Exhibit 12 consists of multiple pages that are 6   Bates stamped, the first is STL000698. The next 7   one is STL000689. The next one is STL000687. And 8   the next one is STL000678. 9           So let's start with the first page of 10   Frank Deposition Exhibit 12, which is the 11   STL000698. What is that document? 12          A   That's the Employee Status Form, 13   and what this documents is the promotion of 14   Mr. Garavaglia to Deputy Comptroller with the 15   increase in salary. 16          Q   Is this 10 percent -- it says "Reason 17   For Data Change," and in parentheses it says "(10 18   percent increase 'salary adjustment')." 19           Do you see that? 20          A   Yes. 21          Q   And that's -- is that salary 22   adjustment the additional 5 percent on what he 23   normally would have been entitled to? 24          A   Yes. 25          Q   All right. Let's go to the next page</p>	<p style="text-align: right;">Page 79</p> <p>1       a service rating in which the employee is rated as 2   overall unsuccessful, in which case they, you know, 3   do not receive that merit increase. 4          Q   Okay. But where does the step part 5   fit into the mix? 6           A   The step increase just indicates that 7   it's the normal annual increase. We have 30 steps 8   in our system. Actually there are some more at the 9   end now because of -- of our new pay study, but 10   current compensation ordinance has 30 steps and 11   each step is 1.5 percent. 12           So unless an employee were granted -- 13   the appointing authority asked me for a special 14   performance increase and it were granted, it would 15   just be called the step increase, which is 1.5 16   percent. 17          Q   And that's the standard annual 18   increase? 19          A   It's -- it has been standard, except 20   the last few years it was 3 percent. 21          Q   Instead of the 1.5? 22          A   Yes. 23          Q   How long was it 1.5, do you recall? 24          A   Oh, gosh. Maybe 2016, '17? I'm not 25   sure. We negotiated with the unions. We used to</p>
<p style="text-align: right;">Page 78</p> <p>1       of that exhibit which is STL000689. And that's a 2   similar form which is the form, just for the 3   record, it says Employee Status Form. Is that the 4   form we were talking about? 5          A   Yes. 6          Q   And this particular Employee Status 7   Form is for Mr. Garavaglia. Is that correct? 8          A   Yes. 9          Q   And it's dated 6/15/17. Is that 10   right? 11          A   Yes. 12          Q   And do you know what the purpose of 13   this particular form was for? 14          A   Yes. This is to process the 15   employee's annual increase. 16          Q   Okay. And for the record, it says 17   "Reason For Data Change," it says "Merit," and then 18   in parentheses it has "(Step) increase." 19           Do you see that? 20          A   Yes. 21          Q   And what does that mean? 22          A   What that means, we are a merit 23   system, and so employees automatically would get 24   their annual increase, which we call a merit 25   increase, unless their appointing authority submits</p>	<p style="text-align: right;">Page 80</p> <p>1       have open ranges and they weren't working, so we 2   negotiated 30 steps and each step had about a 1.5 3   percent in between them except the trades. 4           The trades, because they had an 5   expanded range, received a larger one in step 30. 6   But for all other employees it was about 1.5 7   percent, excluding police and fire that had 8   separate, they have a separate type of -- of pay 9   matrix. 10          Q   Okay. And then let's go to the next 11   page, which, for the record, is the Employee Status 12   Form and it looks like it was completed 6/20/18? 13          A   Yes, sir. 14          Q   Is that right? 15          A   Yes, sir. 16          Q   And is that for Mr. Garavaglia? 17          A   Yes, sir. 18          Q   And does this reflect a "Merit (Step) 19   increase" as well? 20          A   Yes. 21          Q   That would have been the standard 1.5 22   percent increase? 23          A   Yes, I believe in 2018 it was still. 24          Q   Yep. 25          A   Right.</p>

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<p>1       Q   Let's go to the next page, STL000678.  2       Do you see that?  3       A   Yes.  4       Q   And is that an Employee Status Form  5       for Mr. Garavaglia?  6       A   Yes, it is.  7       Q   And the "Reason For Data Change," it  8       says "Retired effective 10/1/19." Is that correct?  9       A   Yes.  10      Q   All right. Let's turn to the next  11     document, which is Frank Depo Exhibit 13. And for  12     the record, it is a group exhibit which appears to  13     have consecutively numbered pages starting with  14     STL001373 through STL001408.  15     I'm going to direct your attention to  16     – it is five pages in, and the bottom is Bates  17     stamped page STL001377. Do you have that page in  18     front of you?  19     A   I do. I do.  20     Q   Okay. What is that page?  21     A   This is the page that is generated by  22     the Board of Trustees of the Employees Retirement  23     System document and the Award of Pension Allowance.  24     Q   Maybe it'd be better to come back to  25     that page. Let's skip down to STL001405, if we</p>	<p>1       Q   – "2019"?  2       A   Yes.  3       Q   And would that reflect, then, the  4       date that he elected to take retirement?  5       A   Yes.  6       Q   All right. And for the record,  7       August 30 of 2019 would have been two days after  8       the notice of pre-termination; do you recall the  9       letter dated August 28, 2019 –  10      A   I remember seeing it. I'd have to go  11     back to the –  12      Q   All right. Let's go back to that  13     exhibit which is --  14      A   Yes.  15      Q   – Exhibit –  16      A   10.  17      Q   – 9 and 10 –  18      A   Yes.  19      Q   – 10 being the termination notice?  20      A   Yes, I have it, sir.  21      Q   So it looks like two days after the  22     pre-termination notice was, says "Hand-Delivered"  23     to Mr. Garavaglia, he elected to retire. Is that  24     what it appears, based on these records?  25      A   Yes, it does.</p>
<p style="text-align: center;">Page 82</p> <p>1       could. Do you have that page in front of you?  2       A   Not yet. I'm -- I'm getting there,  3       sorry.  4       Q   Yeah, 1405.  5       A   Is this it? I -- I think I got it.  6       Thank you.  7       Q   Okay. What is that page?  8       A   This is the elect -- the form which  9       is generated by the Employees Retirement office and  10      it elects about -- it's the election of what type  11      of retirement you wish to take.  12      Q   Okay. And in this case, what does it  13      show?  14      A   It indicates that he was taking  15      normal retirement --  16      Q   "He" who?  17      A   Mr. Garavaglia.  18      Q   Thank you.  19      A   -- effective 10/1/19.  20      Q   And when did Mr. Garavaglia make that  21      request? In the middle of the document it says  22      "Request made" --  23      A   It's --  24      Q   – "this 30th day of August" --  25      A   "August."</p>	<p style="text-align: center;">Page 84</p> <p>1       Q   And it – and a -- and going back to  2       Exhibit 10, there was a pre-termination -- it says  3       hearing but we talked about a different term, your  4       term was review, was set for September 12, 2019, at  5       9 AM. Is that right?  6       A   Yep.  7       Q   Per Frank Depo Exhibit 10?  8       A   Yes.  9       Q   All right. So, and that was the  10      opportunity for him to present evidence, have his  11      lawyer present, et cetera. Is that right?  12      A   Yes.  13      Q   All right. But instead, two days  14      later he submitted retirement papers?  15      A   Yes.  16      Q   Then let's go back to five pages into  17      Exhibit 13, which was the Award of Pension  18      Allowance. Sorry to have you jumping around.  19      A   Oh, that's okay. I have it.  20      Q   Okay. And – and who -- who submits  21      this document?  22      A   This document is submitted to the  23      Board of Trustees by Denise Droege, or whoever is  24      occupying the position of manager of the Employees  25      Retirement System, who reports directly to the</p>

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<p>1      director of personnel.</p> <p>2      Q    Okay. And so is this – was this 3      particular document, STL0001370 – 1377 issued – 4      triggered based upon the request to retire by 5      Mr. Garavaglia?</p> <p>6      A    Yes.</p> <p>7      Q    All right. And it talks about the 8      "Date Request Filed" of "August 30, 2019." Is that 9      right?</p> <p>10     A    Yes.</p> <p>11     Q    And it talks about -- well, what else 12    – what else is included in here?</p> <p>13     A    It talks about the person's credible 14    years of service. It talks about the period of 15    service, what their title is, their date of birth, 16    what their, um, I think I said final average 17    compensation, and then it also includes what the 18    anticipated final average -- I'm sorry, the pension 19    allowance is, you know, prior to taxes.</p> <p>20     Q    Okay. And let's go to STL0001407, 21    which is second from the back. That makes it 22    easier to find.</p> <p>23     A    Okay. Yeah.</p> <p>24     Q    Are you there?</p> <p>25     A    I am, thank you.</p>	<p>1      age, or sex?</p> <p>2      A    Yes.</p> <p>3      Q    What is that process?</p> <p>4      A    It's covered under Administrative 5      Regulation 51, which is -- pardon me. Pardon me. 6      It's covered by -- I believe it's Administrative 7      Regulation 103 which is the policy against Title 8      VII type of -- of violations, and it instructs the 9      employee that they can either go to their diversity 10     counselor in their own department, or they can go 11     to their appointing authority, or they can come 12     directly to the employee relations section and 13     speak in confidence to, you know, a member of the 14     department personnel staff.</p> <p>15     Q    Okay. And that would be a 16    confidential communication; is that right?</p> <p>17     A    Yes.</p> <p>18     Q    All right. Do you know if James 19    Garavaglia ever pursued any claim of discrimination 20    against Comptroller Darlene Green, or anyone else, 21    based upon race, age, or sex discrimination 22    allegations?</p> <p>23     A    I'm unaware myself of any.</p> <p>24     Q    Okay. And while you were there, had 25    you received anything along those lines?</p>
Page 86	Page 88
<p>1      Q    And for the record, it is a document 2      that has a heading, Acknowledgment of Retirement 3      Pension Laws, Rules, Regulations and Policies. 4      Do you see that?</p> <p>5      A    Yes.</p> <p>6      Q    What is that?</p> <p>7      A    This is something that's a notice 8      that is required to be signed by anyone who is 9      applying for retirement through the Employees 10     Retirement System.</p> <p>11     Q    Okay. And for this particular 12    document, STL001407, is that signed and 13    acknowledged by Mr. James Garavaglia?</p> <p>14     A    Yes, it is.</p> <p>15     Q    And is dated 8/30/19; is that right?</p> <p>16     A    Yes. That's correct.</p> <p>17     Q    And that's him essentially 18    acknowledging the retirement pension laws, rules, 19    regulations, and policies; is that right?</p> <p>20     A    Yes.</p> <p>21     Q    Okay. Is there a process in the 22    City, at least when you were there as director of 23    personnel, is there a process by which a person can 24    pursue a grievance if that person believes he or 25    she has been discriminated against based upon race,</p>	<p>1      A    No.</p> <p>2      Q    If there were such a thing, would you 3      have been made aware of it?</p> <p>4      A    Possibly.</p> <p>5      Q    Okay.</p> <p>6      A    It's -- I would say, you know, the 7      person may just want to come in and explore their 8      options with the employee relations section but not 9      actually pursue something.</p> <p>10     Q    Okay.</p> <p>11     A    So in that case I wouldn't have been 12    informed necessarily.</p> <p>13     Q    Well, what if that person who made 14    the allegation decided to pursue something? Would 15    that come to your – to your attention?</p> <p>16     A    Yes.</p> <p>17     Q    All right. And to your knowledge, 18    nothing from Mr. Garavaglia came to your attention 19    related to suggestions of discrimination based upon 20    race, age, or sex. Is that correct?</p> <p>21     A    Correct.</p> <p>22     MS. HAMILTON: And you're referring 23    to Administrative Regulation 103, the internal 24    process; correct?</p> <p>25     MR. NORWOOD: Yes. In terms of pro</p>

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<p style="text-align: right;">Page 89</p> <p>1     -- procedures, whatever is set forth in that --      2     A    Correct.      3        MR. NORWOOD: -- administrative      4        regulation for discrimination allegations.      5        A    You're correct. I'm not referring to      6        any complaints with MCHR or EEOC.      7        Q    <b>(BY MR. NORWOOD) Okay. We're</b>      8        <b>talking internal complaints.</b>      9        A    Yes.      10      Q    <b>All right. And If such a complaint</b>      11      <b>were made, how does that process go?</b>      12      A    That complaint --      13        MR. BLANKE: Let me object as to      14        relevance, but go ahead.      15        MS. HAMILTON: You can answer.      16        A    The employee relations section would      17        -- the manager would, either herself or himself or      18        one of the staff members, meet with the person and      19        do a thorough investigation. And when I say      20        thorough, it is. It's documented and then it is      21        presented to the director of personnel for his or      22        her personal review and approval of the report, and      23        then the findings are related both back to -- or      24        back to both the appointing authority as well as      25        the employee.</p>	<p style="text-align: right;">Page 91</p> <p>1        special interim rating that occurs if a person's      2        performance dramatically increases or decreases      3        during the annual period of time.      4        Q    <b>And who submits those ratings on</b>      5        <b>behalf of an employee?</b>      6        A    The appointing authority.      7        Q    <b>Okay. Who actually performs the</b>      8        <b>ratings for a particular employee?</b>      9        A    The employee's supervisor typically      10       will do them, but they need to be signed off by the      11       appointing authority --      12       Q    <b>By the appointing --</b>      13       A    -- or -- or the appointing authority      14       designee has the right to do that in many      15       instances.      16       Q    <b>Okay. Do all supervisors provide</b>      17       <b>ratings for employees?</b>      18       A    No, they do not.      19       Q    <b>Is that fairly common in the City of</b>      20       <b>St. Louis?</b>      21       A    Yes.      22       MR. BLANKE: I'm sorry, I was going      23       to object as to vagueness, because is what fairly      24       common? Doing it or not doing it? You said is it      25       fairly common.</p>
<p style="text-align: right;">Page 90</p> <p>1        Q    <b>(BY MR. NORWOOD) And are there any</b>      2        <b>next steps beyond that, assuming there's a finding</b>      3        <b>of discrimination?</b>      4        A    If there's a finding of      5        discrimination, then the employee relations section      6        typically would include suggested remedial steps to      7        ameliorate the situation.      8        Q    <b>And to your knowledge, none of that</b>      9        <b>happened as related to Mr. James Garavaglia; is</b>      10       <b>that correct?</b>      11       A    That's correct.      12       Q    <b>What is an employee rating?</b>      13       A    An employee rating is part of the      14       larger City civil service employee rating process,      15       it's approved by the Civil Service Commission, and      16       it's either an annual rating, which is done on      17       those dates we discussed before, which determines      18       whether or not the employee is eligible for the      19       annual merit slash step increase, or there can be a      20       probationary rating, which is their initial working      21       test period, one that typically occurs after six      22       months, it can be extended by -- with the approval      23       of the director of personnel an additional five      24       months.      25       And then lastly, there might be a</p>	<p style="text-align: right;">Page 92</p> <p>1        MR. NORWOOD: Fair enough.      2       Q    <b>(BY MR. NORWOOD) Is not submitting</b>      3       <b>an employee rating fairly common in the City?</b>      4       A    Oh. Oh, yes.      5       Q    <b>And I believe you may have touched on</b>      6       <b>this before, so, but if an employee is not rated,</b>      7       <b>does that mean they would automatically receive</b>      8       <b>that step increase you talked about?</b>      9       A    If an employee is not rated, their      10       last rating on record in their file is the one that      11       prevails. So if it was successful, or highly      12       successful, then yes, they would -- they would      13       still receive that increase.      14       Q    <b>Okay. Did Mr. James Garavaglia ever</b>      15       <b>come to you and complain to you that he did not</b>      16       <b>receive a rating as Deputy Comptroller?</b>      17       A    No.      18       Q    <b>Did -- and we saw that, from the</b>      19       <b>forms we looked at in '17 and '18, he received that</b>      20       <b>merit step increase those two years, '17 and '18?</b>      21       A    Yes.      22       Q    <b>Now, let's talk about part-time</b>      23       <b>employment as it relates to retirees. How does</b>      24       <b>that work? When someone retires, how does one go</b>      25       <b>about working part-time with the City?</b></p>

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<p>1       A   A person who wants to work part-time  2   with -- with the City, who is retired, you know, is  3   -- is eligible to request reemployment papers. And  4   many employees do. And they have to complete those  5   retirement -- or reemployment papers, and they are  6   then sent to the personnel services section of the  7   Department of Personnel, and in the vast majority  8   of instances, you know, those -- those requests are  9   approved, provided, however, that the employee does  10   not have, you know, a -- a work history of  11   documented, you know, repeat disciplinary problems,  12   et cetera.</p> <p>13       <b>Q   Okay. In the case of Mr. James  14   Garavaglia, are you aware of him submitting any  15   request to work part-time after his retirement from  16   the City of St. Louis?</b></p> <p>17       A   I'm not personally aware, no.</p> <p>18       <b>Q   Okay. Do you know if, in the case of  19   Mr. James Garavaglia, whether or not, if he applied  20   for reemployment as a part-time employee following  21   retirement, whether or not he had to work for the  22   Comptroller's office?</b></p> <p>23       A   I have no knowledge of that.</p> <p>24       <b>Q   Okay. Well, let me ask it this way.  25   Do you know if there were other departments he</b></p>	<p>1       prohibition.</p> <p>2       <b>Q   And it's just a matter of filling out  3   an application and submitting that to personnel; is  4   that right?</b></p> <p>5       A   That's correct.</p> <p>6            MR. NORWOOD: I think I may be done.</p> <p>7       Let me just take a moment here.</p> <p>8            Okay. I think at this moment I am</p> <p>9       done. I don't know if other counsel have</p> <p>10      questions.</p> <p>11           MR. BLANKE: Oh, I have lots of</p> <p>12      questions, but can we eat?</p> <p>13           MR. NORWOOD: If the food's here. I</p> <p>14      mean, I don't have any control of that. So you're</p> <p>15      saying you want to see if we can take a lunch</p> <p>16      break?</p> <p>17           MR. BLANKE: If -- yeah.</p> <p>18           MR. NORWOOD: Could you check, Joy,</p> <p>19      just to -- just to see, and why don't we go off the</p> <p>20      record for a minute while we --</p> <p>21           THE VIDEOGRAPHER: Time is 12:08, we</p> <p>22      are off the record.</p> <p>23           (Off the record.)</p> <p>24           THE VIDEOGRAPHER: The time is 1:05</p> <p>25      PM, we are back on the record.</p>
<p>1       could have applied to work in other than the  2   Comptroller's office?</p> <p>3       A   Yes.</p> <p>4       <b>Q   Okay. And you talked about some  5   thirty-some-odd departments within the City.  6   Correct?</b></p> <p>7       A   Yes.</p> <p>8       <b>Q   So do you know if Mr. Garavaglia  9   could have applied to work part-time for the City  10   of St. Louis in a department other than the  11   Comptroller's office and actually worked in that  12   department?</b></p> <p>13       A   Yes.</p> <p>14       <b>Q   Okay. Do you know if there was any  15   prohibition against him doing that today?</b></p> <p>16       A   No.</p> <p>17       <b>Q   Okay. Well, doing that at the time  18   you retired, you were not aware any of prohibition  19   against him applying and working part-time either  20   at the Comptroller's office or some other  21   department in the City. Correct?</b></p> <p>22       A   No.</p> <p>23       <b>Q   Correct, meaning you're not aware any  24   of prohibition; is that right?</b></p> <p>25       A   No. I'm not aware of any</p>	<p>1       EXAMINATION</p> <p>2       QUESTIONS BY MR. BLANKE:</p> <p>3       <b>Q   So, Mr. Frank, my name is Richard  4   Blanke, I represent the Plaintiff, Jim Garavaglia.  5   And if you don't understand any questions that I  6   ask you, either because you didn't hear it or  7   because you don't understand it, will you please  8   say that so I can try to rephrase it if I can?</b></p> <p>9       A   Yes.</p> <p>10       <b>Q   Okay. Since the date your retirement  11   became effective -- which I think was January 1 of  12   2022?</b></p> <p>13       A   Yes.</p> <p>14       <b>Q   -- have you been doing any consulting  15   work for the City, or any other kind of services  16   for the City?</b></p> <p>17       A   No.</p> <p>18       <b>Q   Do you plan to?</b></p> <p>19       A   No.</p> <p>20       <b>Q   Okay. Um --</b></p> <p>21           MR. NORWOOD: That was three pages --</p> <p>22           MR. BLANKE: What's that?</p> <p>23           MR. NORWOOD: No, I said that was</p> <p>24      three pages worth right there.</p> <p>25           MR. BLANKE: True. Don't be too</p>

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<p style="text-align: right;">Page 97</p> <p>1       encouraged.</p> <p>2       <b>Q (BY MR. BLANKE)</b> Okay. Now, you --</p> <p>3       you indicated on direct examination by Mr. Norwood</p> <p>4       that once an employee is placed on forced leave,</p> <p>5       they are usually removed or escorted off the</p> <p>6       premises of the work site at the time they're</p> <p>7       notified of the forced leave, I believe is what you</p> <p>8       said.</p> <p>9       A   Yes.</p> <p>10      <b>Q</b> Okay. My first question, is that</p> <p>11      always the case?</p> <p>12      A   I couldn't testify to always because</p> <p>13      it could happen and I wouldn't be aware of it.</p> <p>14      <b>Q</b> The second question is, you know, my</p> <p>15      understanding is, is that the appointing authority,</p> <p>16      or the designee, makes a request to your office</p> <p>17      that -- for the forced leave, and then you approve</p> <p>18      it, and that could be a day or two or something</p> <p>19      like that, and they have some time limit within</p> <p>20      which to do that; right?</p> <p>21      A   Yes, 72 hours.</p> <p>22      <b>Q</b> So the question is, do they get</p> <p>23      removed from the premises after the decision is</p> <p>24      made by the appointing authority to put them on</p> <p>25      forced leave, or after you approve the decision?</p>	<p style="text-align: right;">Page 99</p> <p>1           There was another example in the</p> <p>2           police division where a person was charged with --</p> <p>3           with an alcohol violation when they were driving,</p> <p>4           and they were -- the forced leave was rescinded and</p> <p>5           they were allowed to come back to desk duty but</p> <p>6           then IED uncovered other incidents that occurred</p> <p>7           during the investigation. And so the -- they</p> <p>8           requested forced leave for the employee again.</p> <p>9           Those are two that come to mind</p> <p>10          immediately.</p> <p>11          <b>Q</b> Okay. You also testified in direct</p> <p>12          that -- direct examination that if there are</p> <p>13          additional allegations unearthed by the</p> <p>14          investigation, that they should be and usually are</p> <p>15          considered in the determination as to whether</p> <p>16          forced leave would continue or be reinstated if it</p> <p>17          had been withdrawn earlier; correct?</p> <p>18          A   Yes.</p> <p>19          <b>Q</b> Okay. Is there -- is there any</p> <p>20          limitations regarding the scope of what these</p> <p>21          additional allegations would be that would justify</p> <p>22          reinstatement of a forced leave? Like the two</p> <p>23          examples you just gave.</p> <p>24          I mean, the two examples you just</p> <p>25          gave were when additional allegations unearthed</p>
<p style="text-align: right;">Page 98</p> <p>1       A   After the appointing authority makes</p> <p>2       the decision to initially place them on forced</p> <p>3       leave.</p> <p>4       <b>Q</b> And that happens before you approve</p> <p>5       the decision?</p> <p>6       A   Yes.</p> <p>7       <b>Q</b> Okay. You said that rescinding or</p> <p>8       withdrawing a forced leave and then reinstating a</p> <p>9       forced leave thereafter was unusual, but that you</p> <p>10       knew that it did occur on certain times --</p> <p>11       A   Yes.</p> <p>12       <b>Q</b> -- or has occurred; correct?</p> <p>13       A   Yes.</p> <p>14       <b>Q</b> Okay. How unusual?</p> <p>15       A   I can only recall it happening --</p> <p>16       happening a handful of times.</p> <p>17       <b>Q</b> Okay. Do you remember those specific</p> <p>18       occasions?</p> <p>19       A   One was an occasion in the forestry</p> <p>20       department, I may have alluded to it, but when an</p> <p>21       employee originally made a -- a threatening remark</p> <p>22       and was immediately returned because we didn't</p> <p>23       think that it felt -- it really met that the -- the</p> <p>24       threshold for forced leave, but then immediately</p> <p>25       upon returning, made physical contact.</p>	<p style="text-align: right;">Page 100</p> <p>1           after the forced leave was withdrawn; correct?</p> <p>2           A   Yes.</p> <p>3           <b>Q</b> So, you know, if there were</p> <p>4           additional allegations unearthed of misconduct or</p> <p>5           alleged misconduct that occurred nine years earlier</p> <p>6           or thereabouts, would that justify a reinstatement</p> <p>7           of forced leave alone?</p> <p>8           A   It depends on the nature of the</p> <p>9           violations.</p> <p>10          <b>Q</b> Right.</p> <p>11          A   You know, typically if it were a</p> <p>12          violation that were something as simple as being 15</p> <p>13          minutes late to work on an attendance sheet,</p> <p>14          perhaps not. But if it was a violation of sexual</p> <p>15          harassment, yes. So it really depends on the</p> <p>16          nature of the prior allegations -- or I mean of the</p> <p>17          prior incidents which led to additional violations.</p> <p>18          <b>Q</b> And what about the length of time,</p> <p>19          how far back it goes? Does that factor into it as</p> <p>20          well, or no?</p> <p>21          A   It would, again, depending on --</p> <p>22          there's no hard, fast rule about that, but one</p> <p>23          would have to exercise discretion depending on the</p> <p>24          severity of the allegations.</p> <p>25          <b>Q</b> Okay. Now, here, with regard to</p>

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<p>1     <b>Mr. Garavaglia, when Comptroller Green withdrew her 2     first request for forced leave, she asked that 3     forced leave be reinstated within days; correct?</b></p> <p>4     A   Yes, that's my recollection.</p> <p>5     Q   <b>And there was no additional 6     allegations brought to your attention at that time.</b></p> <p>7     MR. NORWOOD: Well, let me object 8     because that assumes facts not in evidence. 9     Subject to that.</p> <p>10    A   No, no additional allegations were 11    made known to me.</p> <p>12    Q   <b>(BY MR. BLANKE) Right.</b></p> <p>13    A   She was --</p> <p>14    Q   <b>That's all you can say.</b></p> <p>15    A   Yeah.</p> <p>16    Q   <b>And then the second time, it was 17    actually the very same day or the day after that 18    she reinstated the forced leave; is that correct?</b></p> <p>19    A   That's correct.</p> <p>20    Q   <b>And again, there are no additional 21    allegations that came to you that occurred during 22    that time period; is that correct?</b></p> <p>23    A   Not to me as director of personnel, 24    no.</p> <p>25    Q   <b>And why would -- why would it be</b></p>	<p>1     <b>Is -- is that how you know about it?</b></p> <p>2     A   I know about it through conversations 3     with Deputy City Counselor Nancy Kistler who 4     informed me --</p> <p>5     MS. HAMILTON: Objection --</p> <p>6     Q   <b>(BY MR. BLANKE) That's where you got 7     to stop.</b></p> <p>8     MS. HAMILTON: -- I'll stop you and 9     ask you not to go into a privileged conversation 10    with counsel.</p> <p>11    THE WITNESS: Okay. Thank you.</p> <p>12    Q   <b>(BY MR. BLANKE) We'll get into this 13    in a minute but -- in more detail, but just do you 14    recall, before we get into it, that the original 15    forced leave was withdrawn and reinstated a very 16    short time before the hearing was scheduled?</b></p> <p>17    A   No, I don't -- I don't recollect 18    that.</p> <p>19    Q   <b>Do you recall the second time that 20    the forced leave was withdrawn, that it was 21    withdrawn one day -- or several days before the -- 22    before the hearing was scheduled?</b></p> <p>23    MR. NORWOOD: Let me object in terms 24    of vague and ambiguous with respect to "the 25    hearing."</p>
<p>1     <b>necessary to withdraw a forced leave request and 2     then file another one? Why couldn't it just be 3     extended?</b></p> <p>4     MS. HAMILTON: And I would object 5     that that calls for speculation, but to the extent 6     you can answer on behalf of Defendant Green, you 7     may.</p> <p>8     MR. NORWOOD: And let me also object 9     because I think it's a compound question, but 10    subject to that.</p> <p>11    MS. HAMILTON: And you're asking him 12    what Defendant Green's opinion in this question?</p> <p>13    MR. BLANKE: No. I'm just saying in 14    general.</p> <p>15    A   I was advised that it was done at the 16    recommendation of Deputy City Counselor Nancy 17    Kistler is --</p> <p>18    Q   <b>(BY MR. BLANKE) And that's all -- 19    that's -- that's all you know about it? I mean is 20    that -- my question is this.</b></p> <p>21    MS. HAMILTON: You can answer yes or 22    no.</p> <p>23    Q   <b>(BY MR. BLANKE) Is -- is that 24    enough? Apparently it was enough if -- strike all 25    of that.</b></p>	<p>1     MR. BLANKE: The -- good -- good 2     objection. I'll rephrase the question.</p> <p>3     Q   <b>(BY MR. BLANKE) Do you recall when 4     the second forced leave request was withdrawn, that 5     occurred within days of the scheduled hearing 6     before the Civil Service Commission on the second 7     forced leave?</b></p> <p>8     A   I know that there was some proximity. 9     I don't recall the direct amount of time -- or the 10    actual amount of time in terms of days, no.</p> <p>11    Q   <b>Do you recall even looking at that as 12    a factor in deciding whether to approve it?</b></p> <p>13    A   No, because receiving -- or I mean, 14    excuse me. Rescinding a forced leave request is 15    not discretionary with the director, that's with 16    the appointing authority.</p> <p>17    Q   <b>That answers a question I haven't 18    asked you yet but was going to.</b></p> <p>19    <b>So in terms of reinstating a forced 20    leave request, you've already testified that there 21    was no additional allegations brought to your 22    attention. So why did you improve it?</b></p> <p>23    MR. NORWOOD: Did you say improve it 24    or approve it?</p> <p>25    MR. BLANKE: Approve it. I'm sorry.</p>

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<p>1                   MR. NORWOOD: Okay.</p> <p>2                   A   The original request for forced leave</p> <p>3                   lacked the specific language that was discussed</p> <p>4                   with me during the conversation with Judy</p> <p>5                   Armstrong, which was the -- just a couple of words</p> <p>6                   about serious financial issues which was presented</p> <p>7                   to me. And so when it was asked to be rescinded</p> <p>8                   and reinstated, you know, with said language, you</p> <p>9                   know, I approved it.</p> <p>10                  <b>Q (BY MR. BLANKE) On that basis alone?</b></p> <p>11                  A   Yeah -- on the basis of that as well</p> <p>12                  as the original conversation I had with Judy</p> <p>13                  Armstrong.</p> <p>14                  <b>Q I apologize for taking this out of</b></p> <p>15                  <b>order but it's the way it came up. You indicated</b></p> <p>16                  <b>that if a person is found -- if -- if the forced</b></p> <p>17                  <b>leave is either withdrawn or the Civil Service</b></p> <p>18                  <b>Commission overrules it, that if vacation time had</b></p> <p>19                  <b>not been used during the forced leave, that they</b></p> <p>20                  <b>would be restored their lost pay. Is that correct?</b></p> <p>21                  A   Yes.</p> <p>22                  <b>Q Okay. And if I understood you</b></p> <p>23                  <b>correctly, if the vacation time was used during the</b></p> <p>24                  <b>forced leave, they would not be restored their</b></p> <p>25                  <b>vacation time under the circumstance where they</b></p>	<p>1                   MR. BLANKE: Well, let me object --</p> <p>2                   MS. HAMILTON: Objection, calls for a</p> <p>3                   legal conclusion, and I'm going to direct the</p> <p>4                   witness --</p> <p>5                   MR. BLANKE: Well, he's --</p> <p>6                   MS. HAMILTON: -- not to answer.</p> <p>7                   MR. BLANKE: Well, he's the one</p> <p>8                   that's used those words in his direct examination,</p> <p>9                   that he thought it wasn't a property deprivation.</p> <p>10                  <b>Q (BY MR. BLANKE) Isn't that correct?</b></p> <p>11                  A   I was speaking of property</p> <p>12                  deprivation in terms of loss of income. Of -- you</p> <p>13                  know, of believing -- relying on -- on income. And</p> <p>14                  this person would have remained on active status on</p> <p>15                  the payroll during that period of time, having used</p> <p>16                  vacation time or -- or compensatory time. There's</p> <p>17                  no provision to double pay an employee --</p> <p>18                  <b>Q I'm not talking about double paying</b></p> <p>19                  <b>an employee.</b></p> <p>20                  A   Well, vacation time is, and I don't</p> <p>21                  mean to be argumentative, but vacation time and</p> <p>22                  compensatory time are paid out upon retirement or</p> <p>23                  separation --</p> <p>24                  <b>Q Oh.</b></p> <p>25                  A   -- so it does have a monetary value</p>
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<p>1                  either -- the forced leave is voluntarily withdrawn</p> <p>2                  by the appointing authority or the Civil Service</p> <p>3                  Commission disapproves it?</p> <p>4                  A   They would not be restored unless the</p> <p>5                  period of forced leave were greater than the time</p> <p>6                  that they had used. Again, if the forced leave</p> <p>7                  period was, for example, for three weeks and they</p> <p>8                  had elected to use time, accrued time for two</p> <p>9                  weeks, they have been paid for two weeks and -- and</p> <p>10                 there's -- we would not be able to double pay an</p> <p>11                 employee --</p> <p>12                  <b>Q Right, so my question is --</b></p> <p>13                  A   -- so it would only be for that one</p> <p>14                 week.</p> <p>15                  <b>Q But my question is different.</b></p> <p>16                  A   Then I don't understand. I'm sorry.</p> <p>17                  <b>Q My question is whether or not the</b></p> <p>18                  <b>vacation time would be restored. Not whether they</b></p> <p>19                  <b>would be paid twice, but that the vacation time</b></p> <p>20                  <b>they used, that they didn't have to use if they</b></p> <p>21                  <b>were never placed on forced leave --</b></p> <p>22                  A   No. It would not be restored.</p> <p>23                  <b>Q Okay. Why isn't that, in your</b></p> <p>24                  <b>opinion, a deprivation of a property right?</b></p> <p>25</p>	<p>1                  and so it would, in an effect, amount to double</p> <p>2                  pay.</p> <p>3                  <b>Q Well, that's assuming that he hadn't</b></p> <p>4                  <b>used it before he retired. Isn't that correct?</b></p> <p>5                  MS. HAMILTON: Objection, vague.</p> <p>6                  MR. NORWOOD: Join.</p> <p>7                  <b>Q (BY MR. BLANKE) That's assuming that</b></p> <p>8                  <b>the vacation time would not have been used before</b></p> <p>9                  <b>his separation from employment. If he had used</b></p> <p>10                 <b>that -- that vacation time, that, you know, isn't</b></p> <p>11                 <b>restored to him, but if it was restored to him and</b></p> <p>12                 <b>he had used it, then it would never -- then -- then</b></p> <p>13                 <b>he -- then he -- he wouldn't be getting that upon</b></p> <p>14                 <b>separation from employment; correct?</b></p> <p>15                  MS. HAMILTON: Objection, vague and</p> <p>16                  confusing and compound.</p> <p>17                  MR. NORWOOD: And calls for a bunch</p> <p>18                  of speculation.</p> <p>19                  MS. HAMILTON: To the extent that you</p> <p>20                  understood the question, you may answer.</p> <p>21                  A   The only thing I can say to that is</p> <p>22                  while I understand your position or -- or the</p> <p>23                  argument that an employee, you know, could be</p> <p>24                  disadvantaged by being forced to use vacation or</p> <p>25                  compensatory time in order to remaining in pay</p>

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<p>1 status during forced leave, you know, that -- this      2 policy, you know, was written in conjunction with      3 our law department, to whom I defer, and was also      4 found to be lawful by the Court of Appeals.</p> <p>5 Q (BY MR. BLANKE) Okay. So you're      6 just testifying, then, about your understanding of      7 the law.</p> <p>8 A Yes.</p> <p>9 Q Okay. You also made a comment that      10 -- maybe I'm not familiar with this, but is it      11 possible for the appointing authority to request a      12 forced leave with pay?</p> <p>13 A No.</p> <p>14 Q Okay. I misunderstood. Okay. All      15 forced leaves are without pay unless they take      16 their vacation time.</p> <p>17 A That's correct.</p> <p>18 Q Okay. Now, you said that it was some      19 Saturday at 1:30 prior to the first forced leave      20 request, that you received in writing?</p> <p>21 A Correct.</p> <p>22 Q That you had a discussion with Judy      23 Armstrong --</p> <p>24 A Yes.</p> <p>25 Q -- on the phone. Correct?</p>	<p>1 that she would. I don't know if she came through      2 or not, she did not speak, but I thought that -- I      3 thought I heard another name, but I'm -- I'm not      4 sure if it was Beth or Beverly or I might be      5 mistaken.</p> <p>6 Q Okay. Fair enough. Now, you      7 indicated that -- I thought you said that in that      8 conversation with Judy Armstrong, that she informed      9 you -- I'm talking about the phone call. The oral      10 phone call on a Saturday. Okay?</p> <p>11 A Yes.</p> <p>12 Q That she informed you that      13 Mr. Garavaglia was being accused of serious fiscal      14 issues.</p> <p>15 A Yes.</p> <p>16 Q Can you be more specific than that?      17 What -- what -- did she identify what she was      18 talking about?</p> <p>19 A No, she did not.</p> <p>20 Q And that was enough for you?</p> <p>21 A It was enough because she said that      22 they were serious enough that they were bringing      23 them to the attention of the state auditors.</p> <p>24 Q Let me go back, I -- I hate -- sorry      25 about jumping around.</p>
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<p>1 A Yes, I'm sorry.</p> <p>2 Q Okay. And you thought that perhaps      3 Beth Seright may have been on the phone because      4 somebody told you that might have been the case, or      5 something like that. Right?</p> <p>6 A I believe, yes. I believe that to be      7 true.</p> <p>8 Q Is it possible you misunderstood the      9 name and it was Beverly Fitzsimmons they told you      10 was on the phone?</p> <p>11 A I don't recall that.</p> <p>12 Q I mean, Beth Seright was an      13 administrative assistant at that time; right?</p> <p>14 A Right.</p> <p>15 Q And Beverly was -- was the other      16 deputy; correct?</p> <p>17 A I -- I don't recall that. The      18 Comptroller regularly used Chana Morton to connect      19 her phone calls, and so I believe that Chana, to      20 the best of my recollection, Chana was the person      21 who put the call through. I spoke only with Judy      22 Armstrong but I wasn't clear from Judy if      23 Comptroller were, you know, going to participate on      24 the phone call or not.</p> <p>25 And I think the suggestion was is</p>	<p>1 A That's okay.</p> <p>2 Q But you said that they -- they can --      3 the appointing authority or -- can -- can -- or the      4 department head, can remove somebody when they're      5 placed on forced leave before you approve the      6 forced leave. Is that correct?</p> <p>7 A Yeah. Yes.</p> <p>8 Q How is that -- what's the purpose of      9 your approval?</p> <p>10 A The approval is to make sure that      11 there's a short duration of time before the      12 department personnel, as an objective reviewer, can      13 determine whether or not the forced leave were      14 appropriate. You know, there's weekends, there's      15 holidays, and so there's a 72 period -- or a 72      16 hour time period when they have to get that in to      17 me, you know, in writing, and I conduct my review.</p> <p>18 So, you know, that's the purpose,      19 but, you know, if you had an employee, for      20 instance, who's got a gun at work, and that's      21 happened --</p> <p>22 Q Right.</p> <p>23 A -- you have them removed immediately.      24 You're not going to --</p> <p>25 Q No.</p>

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<p>1       A -- wait for Mr. Frank or his 2 designate, you know, to be able to prove that. 3       <b>Q Now – now, you've seen occasions</b> 4       <b>where – or you have had occasions where you have</b> 5       <b>disapproved a requested forced leave, you</b> 6       <b>testified?</b></p> <p>7       A Yes. 8       <b>Q Okay.</b> Um, so in such a situation, 9       and I'm not talking about Mr. Garavaglia here but 10      just in general, in – in such a situation where 11      somebody's removed from the premises prior to your 12      approval of the forced leave, because of the forced 13      leave, and then you disapprove of the forced leave, 14      I guess the appointing authority has to be deemed 15      responsible for that removal; isn't that correct? 16            MR. NORWOOD: Let me object, because 17      it's vague and ambiguous -- 18            <b>Q (BY MR. BLANKE) I mean, who's the --</b> 19            MR. NORWOOD: Let me finish. 20            MR. BLANKE: Let me withdraw the 21      question. 22            MR. NORWOOD: I'm sorry? 23            MR. BLANKE: I will withdraw the 24      question. 25            <b>Q (BY MR. BLANKE) In that</b></p>	<p>1       trash, we have people who are in the parks, et 2 cetera, where they might not be able to have access 3 to their department director and they need to make 4 an immediate decision in order to avoid a 5 potentially very bad situation. 6       <b>Q Did Linda Thomas ever tell you that</b> 7       <b>she had multiple conversations with Judy Armstrong</b> 8       <b>about Mr. Garavaglia's forced leaves?</b> 9       A No. 10      <b>Q Did she ever tell – did Linda Thomas</b> 11      <b>ever tell you anything about any discussions she</b> 12      <b>had with Miss Armstrong about the forced leaves?</b> 13      A Not with Miss Armstrong, no. 14      <b>Q What about any conversations Linda</b> 15      <b>Thomas had with Comptroller Green –</b> 16      A Yes. 17      <b>Q – about the forced leaves?</b> 18      <b>And how many of those conversations</b> 19      <b>do you recall with – between you and Miss – and</b> 20      <b>Miss Thomas?</b> 21      A Oh, between myself and Miss Thomas? 22      <b>Q Yeah, about conversations that Miss</b> 23      <b>Thomas had with Defendant Green.</b> 24      A Perhaps two or three. 25      <b>Q Okay. And what – what do you recall</b></p>
<p style="text-align: center;">Page 114</p> <p>1       <b>circumstances, it is the appointing authority who</b> 2       <b>would make the sole – who would be making the sole</b> 3       <b>decision to remove that employee. Is that correct?</b> 4       A The employ -- 5        MR. NORWOOD: Let me object – let me 6      object because that assumes a bunch of facts that 7      are not in evidence and it also mischaracterizes 8      what he's already testified to. Subject to that, 9      and subject to counsel's instruction. 10      MS. HAMILTON: You can answer. 11      A There -- there's different levels of 12      appointing authorities. We have department heads, 13      such as Sheena, who report directly to, you know, 14      the Mayor. 15      <b>Q (BY MR. BLANKE) Right.</b> 16      A And then there are also lower levels 17      of appointing authorities or designates. For 18      instance, you know, maybe like a division person. 19      And so those division -- those division people 20      could be appointing authorities, but might very 21      likely, and I would expect them to consult with 22      their department head before they made a decision 23      about forced leave, if it's possible. 24      But we have a lot of field workers in 25      the City, we have people, you know, collecting</p>	<p style="text-align: center;">Page 116</p> <p>1       <b>the substance of those communications were about?</b> 2       A The substance was Linda was always 3      very good about notifying me of any conversation 4      she had with elected officials or Board of Aldermen 5      or appointing authorities with a serious 6      disciplinary matter and she just wanted to inform 7      me that Comptroller had contacted her to ask her 8      for a clarification on forced leave under 9      Administrative Regulation 117. 10      <b>Q Was that before or after the phone</b> 11      <b>call on -- on Saturday at 1:30?</b> 12      A After. 13      <b>Q Was that before or after you approved</b> 14      <b>the first forced leave?</b> 15      A I orally supported the forced leave 16      on Saturday, and I approved the forced leave on 17      Monday. So I'm not sure of the exact timing of her 18      conversation, just that she did in fact -- 19      <b>Q So you think it's possible you may</b> 20      <b>have talked to Miss Thomas, before your approval on</b> 21      <b>Monday, about her conversations with Defendant</b> 22      <b>Green?</b> 23      A I'm not sure. 24      <b>Q Okay.</b> 25      A I don't recollect, I'm sorry.</p>

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<p>1       Q   Okay. You don't recall, you don't 2   recall.</p> <p>3              <b>The pre-termination letters. Letter,</b> 4   <b>in this case. Do you approve those?</b></p> <p>5       A   No.</p> <p>6       Q   Okay. So do you even see them before 7   they go out?</p> <p>8       A   No.</p> <p>9       Q   Okay. So you have no role in that.</p> <p>10      A   No.</p> <p>11      Q   Okay. But if, after the 12   pre-termination review is held, and the appointing 13   authority or department head wants to impose 14   disciplinary action against the employee, you have 15   to approve that?</p> <p>16      A   Myself or my designated --</p> <p>17      Q   Yeah.</p> <p>18      A   -- the director of personnel or his 19   or her designee does have to approve that. I 20   continued throughout my tenure to review personally 21   all police discipline, but that responsibility was 22   delegated to my deputy director, whom I believe at 23   the time, I'm sure, was -- was Kathleen Tanner.</p> <p>24      Q   I'm jumping around again, for which I 25   sincerely apologize, but.</p>	<p>1       there's no evidence to corroborate that, nothing to 2   suggest that, but then that resurfaces eight years 3   later, and you start -- you're seeing a pattern. 4              So again, I think you have to look, 5   as difficult as it can be, you have to look at the 6   individual circumstances of what the allegation 7   was, you know, and what the finding was at that 8   time, and, you know, the recency, and does it 9   connect with the current allegation, et cetera. 10          So you have to look at it in terms of 11   the totality, and that's what I would advise. And 12   I think that that's why it's important. 13          I will say that I don't always rely 14   solely on my own judgment either. I work very 15   closely with, you know, the highest members of our 16   law department as well to make sure that my 17   judgment, carrying the weight that it does, is 18   appropriate. And that's what I did in this 19   instance. 20          <b>Q (BY MR. BLANKE) I – I thought you</b> 21   <b>said that the – I don't remember if you said it</b> 22   <b>was an ordinance or the charter, that gives you the</b> 23   <b>discretion to approve or disapprove a forced leave?</b> 24          A   Actually, it's the administrative 25   regulation that gives me --</p>
<p style="text-align: center;">Page 118</p> <p>1       A   Mm-hmm.</p> <p>2       Q   <b>Going back to this idea of unearthing</b> 3   <b>additional allegations which might justify a</b> 4   <b>reinstatement of a previously withdrawn forced</b> 5   <b>leave; okay? This – my question is, what if the</b> 6   <b>allegations that are unearthed in the investigation</b> 7   <b>were remote – were – were in the past, before the</b> 8   <b>forced leave was ever requested; okay? Number one.</b> 9              And number two, the department head 10   knew about them. That these are not new 11   allegations. That the department head knew all 12   about it before the investigation. Would that 13   justify the reinstatement of a forced leave?</p> <p>14      MR. NORWOOD: Well, let me object 15   because I think it calls for speculation, improper 16   hypothetical, and a legal conclusion. Subject to 17   all of that, and subject to counsel.</p> <p>18      MS. HAMILTON: I was going to say, 19   object that it's compound.</p> <p>20      MR. NORWOOD: I join in that part as 21   well.</p> <p>22      A   I would say it has to, again, be on a 23   case-by-case basis. You may have an allegation, 24   for instance, that let's say, as director, somebody 25   alleged that I inappropriately touched them. And</p>	<p style="text-align: center;">Page 120</p> <p>1       <b>Q   117?</b> 2       A   Yes, it does, but there are other -- 3   I would say that there are other things that are 4   discretionary. Such as granting Mr. Garavaglia an 5   increase in salary. I don't rely just on my own 6   discretion. I have the classification and 7   compensation section review it. 8              Similarly, if it's an employee 9   grievance matter, I have service rating appeal 10   boards and grievance boards, et cetera, that make a 11   recommendation to me. 12          So I try and gather as much available 13   information as I can. You know, we have competent 14   professionals that specialize within that. 15          <b>Q   But these examples you just gave are</b> 16   <b>all people working within your department, within</b> 17   <b>the Department of Personnel. Correct?</b> 18          A   Yes, but I have legal counsel. I'm 19   represented by the City Counselor. 20          <b>Q   So how often do you seek legal</b> 21   <b>opinions from your legal counsel, the City</b> 22   <b>Counselor's office –</b> 23      MR. BLANKE: Well -- 24      <b>Q (BY MR. BLANKE) -- before you put</b> 25   <b>somebody on forced leave?</b></p>

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<p>1           MR. NORWOOD: Well, let me object, 2 because there's no time reference. 3           MR. BLANKE: Well, just in -- 4           MS. HAMILTON: I'll just object to 5 the relevance of the question in that it seems to 6 be skirting on getting into privileged information. 7           MR. BLANKE: Well -- 8           MR. NORWOOD: I join in that 9 objection. 10          MR. BLANKE: -- my question stands. 11          THE WITNESS: May I answer it? 12          <b>Q (BY MR. BLANKE) Is it -- let --</b> 13          MS. HAMILTON: I don't think you need 14 to answer the question. 15          <b>Q (BY MR. BLANKE) -- I'll -- I'll just 16 add it, you -- you don't need to, but she doesn't 17 represent you. Okay? So it's your choice.</b> 18          MS. HAMILTON: And why are you saying 19 he doesn't -- I don't represent him? 20          MR. BLANKE: Well, do you? 21          MS. HAMILTON: I'm representing the 22 City of St. Louis. He's -- 23          (Overtalking - inaudible.) 24          MR. BLANKE: Well, he's -- he's not 25 an employee -- he's not an employ -- he's not an</p>	<p>1 separate engagement letter with Mr. Frank. But you 2 have asked him here to testify as to his duties 3 when he was director of personnel. 4           MR. BLANKE: All right. Let's cut to 5 the chase. Are you instructing him -- 6           MS. HAMILTON: And he -- 7           MR. BLANKE: -- not to answer the 8 question? 9           MS. HAMILTON: Yes, about how often 10 you consult your counsel, you do not have to answer 11 that question. 12          <b>Q (BY MR. BLANKE) Okay, and I'm asking 13 you to answer the question. She's telling you that 14 she represents you and you shouldn't answer the 15 question, so what are you going to do? I mean, 16 it's your choice.</b> 17          A I feel that my discussions with my 18 legal counsel are privileged. I'm not an attorney, 19 but I believe -- 20          <b>Q Right.</b> 21          A -- they're privileged, and I have 22 ongoing consultation and have had ongoing 23 consultation in my role as former director of 24 personnel with upcoming lawsuits. So I decline. 25          <b>Q Right, and -- and let's be clear.</b></p>
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<p>1 employee of the City of St. Louis. What are you 2 talking about? 3           MS. HAMILTON: He is a -- you're 4 asking him here to testify as Director of -- as his 5 work as the director of personnel; correct? 6           MR. BLANKE: No. We're asking -- 7           MS. HAMILTON: Every question you've 8 asked him about has been about his duties as the 9 director of personnel. So I'm very confused -- 10          MR. BLANKE: No. No. We're asking 11 him about his -- his -- his -- his duties as a 12 former director of personnel. 13          MS. HAMILTON: Okay. 14          MR. BLANKE: Not as the director of 15 personnel. He's not a City employee -- 16          (Overtalking - inaudible.) 17          MS. HAMILTON: -- and I object on 18 behalf of the City of St. Louis -- 19          MR. BLANKE: -- and you do not 20 represent him. Do you? 21          MS. HAMILTON: Absolutely. 22          MR. BLANKE: I mean, you -- so you 23 have a separate re -- you have a separate 24 engagement letter with Mr. Frank? 25          MS. HAMILTON: No, I don't have a</p>	<p>1 <b>I'm not asking you about the substance of any --</b> 2           MS. HAMILTON: He was -- just -- just 3 so that we're clear -- 4           A I decline. 5           MS. HAMILTON: -- he was finishing 6 his answer and he was going to say that he 7 declines. 8           MR. BLANKE: Oh, I'm sorry. I'm 9 sorry. Oh. 10          A Yeah. I decline to answer that. 11          <b>Q (BY MR. BLANKE) Okay. Well, let me 12 -- let me -- you decline to answer the question. I 13 think you did, though, but let me ask. To be 14 clear, I'm not asking you about the substance of 15 any communications you had with any lawyer, much 16 less the City Counselor's office.</b> 17          <b>I'm simply asking you whether or not 18 you consulted them at all with regard to your 19 forced leave decisions, and if that -- if so, how 20 common of a practice was that?</b> 21          MS. HAMILTON: And as to the first 22 question -- you know, because this is a compound 23 one again. As to the first question of has he 24 ever, I think he's testified to that already, so 25 I'm going to --</p>

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<p>1           MR. BLANKE: Right.</p> <p>2           MS. HAMILTON: -- object that it's</p> <p>3       asked and answered.</p> <p>4           MR. BLANKE: Right.</p> <p>5           MS. HAMILTON: As to the frequency</p> <p>6       with which he does so, again, I think you're</p> <p>7       skirting on attorney-client privilege, and I'll</p> <p>8       instruct the witness not to answer.</p> <p>9           MR. BLANKE: So you're now agreeing</p> <p>10      that he did answer the question that he said he</p> <p>11      didn't answer.</p> <p>12           MS. HAMILTON: No, your question that</p> <p>13      I objected to was how frequently do you --</p> <p>14           MR. BLANKE: Right.</p> <p>15           MS. HAMILTON: -- take advice from</p> <p>16      counsel --</p> <p>17           MR. BLANKE: That's the second part.</p> <p>18           MS. HAMILTON: -- regarding forced</p> <p>19      leave. Yeah.</p> <p>20           MR. BLANKE: That's --</p> <p>21           MS. HAMILTON: And that's the</p> <p>22      question I objected to.</p> <p>23           MR. BLANKE: Okay.</p> <p>24           MS. HAMILTON: I did not object to</p> <p>25      the first.</p>	<p>1           The City's -- City's Director of</p> <p>2       Personnel approved the forced leave</p> <p>3       each time knowing that there was</p> <p>4       no --</p> <p>5           MS. HAMILTON: Where are you, sir?</p> <p>6           MR. BLANKE: This is Paragraph 17 of</p> <p>7       the Complaint --</p> <p>8           MR. NORWOOD: Page --</p> <p>9           MR. BLANKE: -- on page 4 of Exhibit</p> <p>10      1. Just take a look at that.</p> <p>11           <b>Q (BY MR. BLANKE) Here's my question. When is the first time you learned that that allegation was made?</b></p> <p>12           A   At the time that I received a copy of</p> <p>13      this exhibit.</p> <p>14           <b>Q And when was that?</b></p> <p>15           A   I don't remember. I don't remember</p> <p>16      at the time. I remember that -- that Mr.</p> <p>17      Garavaglia retired in the fall of 2019, but I'm not</p> <p>18      sure of when this wound its way up to court.</p> <p>19           <b>Q So this would have been before you found out you were going to be deposed in this case?</b></p> <p>20           A   Yes.</p> <p>21           <b>Q Okay. How did you prepare for this</b></p>
<p>1           <b>Q (BY MR. BLANKE) So how frequently do you seek City Counselor advice with regard to whether you should approve a forced leave or not?</b></p> <p>2           MS. HAMILTON: Same objection, and</p> <p>3       same recommendation.</p> <p>4           MR. NORWOOD: And let me object in</p> <p>5       terms of no time reference, because he's no longer</p> <p>6       director of personnel today.</p> <p>7           <b>Q (BY MR. BLANKE) Well, I had a time reference. I'm talking about during the time you were the director of personnel.</b></p> <p>8           MS. HAMILTON: Same objection; same</p> <p>9       instruction.</p> <p>10          A   I would still say that, yes, I have</p> <p>11       consulted on -- on matters of forced leave with the</p> <p>12       City Counselor and I decline to go into any more</p> <p>13       specifics than that.</p> <p>14          <b>Q (BY MR. BLANKE) Mr. Frank, you -- I don't know if you read it or Mr. Norwood read it to you, that paragraph 17 of the Complaint where -- where -- let's see if I can find it.</b></p> <p>15          MR. NORWOOD: Tab 1.</p> <p>16          MR. BLANKE: Thank you.</p> <p>17          MR. NORWOOD: Page 4.</p> <p>18          <b>Q (BY MR. BLANKE) (Quote as read):</b></p>	<p>1           <b>deposition?</b></p> <p>2           A   The only way that I prepared for this</p> <p>3       deposition was through two discussions with my --</p> <p>4       with legal counsel.</p> <p>5           <b>Q Did you have any discussions prior to this deposition with Mr. Norwood?</b></p> <p>6           A   Yes.</p> <p>7           <b>Q What about?</b></p> <p>8           A   About this case.</p> <p>9           <b>Q What about more specifically? What about the case?</b></p> <p>10          A   Just about preparing for the</p> <p>11       deposition.</p> <p>12          <b>Q Did you go over in detail any of the exhibits used in his direct examination, with him?</b></p> <p>13          A   Just -- just a few of them.</p> <p>14          MS. HAMILTON: You can answer.</p> <p>15          A   Just a few of them. We did not go</p> <p>16       over this. We went over, um, we went over the --</p> <p>17       my discussion in -- with Judy Armstrong, and we</p> <p>18       discussed the forced leave letters, and we</p> <p>19       discussed -- we discussed the, yeah. The -- the</p> <p>20       general timing of that.</p> <p>21          <b>Q (BY MR. BLANKE) Altogether, do you have any estimate -- can you give me an estimate of</b></p>

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<p style="text-align: right;">Page 129</p> <p>1 how much time you spent with Mr. Norwood preparing 2 for this deposition?</p> <p>3 MR. NORWOOD: Let me object because 4 you didn't -- well, I'll withdraw the objection.</p> <p>5 A An hour the first time, and perhaps 6 an hour and 50 minutes the second time.</p> <p>7 Q (BY MR. BLANKE) Was Darlene Green 8 present?</p> <p>9 A No.</p> <p>10 Q Have you discussed this matter with 11 – have you discussed this lawsuit with Comptroller 12 Green since you found out about it?</p> <p>13 A This lawsuit, one time.</p> <p>14 Q When was that?</p> <p>15 A Sometime during 2021.</p> <p>16 Q What was that discussion about?</p> <p>17 A The discussion was just her concern 18 about the audit findings, what the auditors might 19 -- might find and what they would report about the 20 allegations that she had made against Mr. --</p> <p>21 Q Oh, I'm sorry. So you're talking 22 about before he retired.</p> <p>23 A Yes.</p> <p>24 Q I'm sorry. I meant after he retired.</p> <p>25 A Oh. You -- I'm confused.</p>	<p style="text-align: right;">Page 131</p> <p>1 about the substance of those allegations in the 2 pre-termination letter?</p> <p>3 A Not substance, no.</p> <p>4 Q Okay. Did you ever discuss with 5 Comptroller Green or Judy Armstrong any of the 6 substance of the allegations that ended up in the 7 pre-termination letter?</p> <p>8 A No.</p> <p>9 Q You indicated that the pay ordinance 10 in the City of St. Louis provides for a 5 percent, 11 what's it called, a step increase? A merit step 12 increase?</p> <p>13 A Yeah, a 5 percent salary adjustment.</p> <p>14 Q Per grade?</p> <p>15 A Any time there's a promotion or 16 reclassification upward, a person is entitled to a 17 minimum of 5 percent of their current salary. It's 18 maxed out, however, at 20 percent.</p> <p>19 Q Because the grade has a -- a minimum 20 and a maximum, there's -- it's not just a -- an 21 amount. It's -- it's a -- it's a range of pay. 22 Right?</p> <p>23 A That is true, except the last four 24 years, at least, as director, I had removed the top 25 of the range because we knew our salaries were not</p>
<p style="text-align: right;">Page 130</p> <p>1 Q Let me -- let me ask a different 2 question.</p> <p>3 A Yeah, I'm confused, I'm sorry.</p> <p>4 Q Yeah, I – I – it's my fault. 5 Did you have any discussions with 6 Comptroller Green after you found out about this 7 lawsuit, about the lawsuit?</p> <p>8 A I did have one discussion.</p> <p>9 Q When was that?</p> <p>10 A I don't remember. It was before I 11 retired. Sometime during -- I think sometime 12 during 2021.</p> <p>13 Q And what – and what specifically did 14 you discuss with her at that time?</p> <p>15 A Her concerns about what the state 16 auditors would report about financial problems, and 17 I believe that she mentioned there were problems 18 with corrections, but that's all. I didn't go into 19 any great detail.</p> <p>20 I did read the -- and that was the 21 other document, pardon me, that I did go through 22 with -- with counsel was the pre-termination 23 letter, which I had not seen until after it was 24 delivered to Mr. Garavaglia.</p> <p>25 Q Okay. Did you go into a discussion</p>	<p style="text-align: right;">Page 132</p> <p>1 competitive. And until we completed our slowed 2 down City-wide compensation study, slowed down 3 because of COVID, we wanted -- I consulted with, 4 you know, Mayor Jones and also with -- with Mayor 5 Krewson and we had agreed that we thought it best 6 to allow employees to go beyond the top of the pay 7 grades so that they could continue to receive 8 well-deserved increases.</p> <p>9 Q Okay. So -- so the 5 percent is a 10 minimum, and it can be larger than that if -- if 11 the difference between the two grades, you know, 12 one's at the bottom, one's at the top. Something 13 like that; right?</p> <p>14 A That's true, or if it's requested by 15 the appointing authority and I approve it.</p> <p>16 Q Right. But I'm talking about the 17 automatic merit step increase.</p> <p>18 A Correct.</p> <p>19 Q Yeah.</p> <p>20 A For instance, if you had a 21 receptionist who went to administrative assistant, 22 there may be a 10 percent jump between where that 23 person's at and where the start of the new pay 24 range is, so it could result in a higher grade.</p> <p>25 Q Okay. So also if -- if somebody,</p>

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<p style="text-align: right;">Page 133</p> <p>1 let's say, was a -- I'm just going to make      2 something up -- a -- a grade 10. I don't even know      3 what that means. But, you know, they were a grade      4 10, and they were being promoted to -- to a grade      5 12, okay, would that be, you know, a minimum 5      6 percent, or a minimum 10 percent step increase?</p> <p>7 A Your -- that would be a minimum of 5      8 percent, because the difference between the grades      9 isn't that great. That would more than likely be a      10 grade 5 -- or excuse me, a promotion of 5 percent,      11 again, unless it were requested by the appointing      12 authority and reviewed by my class and comp      13 division and then approved by me.</p> <p>14 Q Yeah, let's stay out of that area.      15 I'm not talking about, what do you call,      16 non-standard pay increases.</p> <p>17 A Yeah.</p> <p>18 Q I'm talking about the standard step      19 increases.</p> <p>20 A The standard, yeah, standard      21 promotional increase is 5 percent.</p> <p>22 Q And that doesn't matter how many      23 grades they're being promoted? If it's resulting      24 from a promotion, it -- it doesn't matter how many      25 grades they're being promoted?</p>	<p style="text-align: right;">Page 135</p> <p>1 that now --</p> <p>2 MS. HAMILTON: Just -- I just was      3 saying, you keep saying "step increase," he keeps      4 saying "salary adjustment." You keep going back to      5 the wrong phrase. Um -- you see?</p> <p>6 Q (BY MR. BLANKE) Well, the salary      7 adjustment is -- is called a "Merit (Step)      8 increase," is it not?</p> <p>9 A Yes. That's only because, again,      10 it's a salary adjustment based on a promotion,      11 demotion, can be reduction in pay for disciplinary      12 reasons.</p> <p>13 Q Right.</p> <p>14 A It -- you know, there are different      15 things that can cause that, so we call -- call it a      16 salary adjustment.</p> <p>17 Step means that the Department of      18 Personnel is responsible for rounding out that      19 figure to the closest approved amount. That's why      20 we said in those letters that it -- you know, if      21 they ask for 10 percent, we will put it to the step      22 that's closest to 10 percent.</p> <p>23 Q So if I understand you correctly,      24 it's possible to get as much as a 10 percent      25 increase, not as a minimum distribution, but as a</p>
<p style="text-align: right;">Page 134</p> <p>1 A I think I've already stated that if      2 the -- you get 5 percent, or you go to the minimum      3 of the new range. So if you had a person who were      4 at a lower level job and then made a big jump,      5 perhaps they had prior experience outside the City      6 and were very qualified, whatever, they -- they      7 would go to the minimum of the new pay range.</p> <p>8 Q That much I understand. But my -- my      9 question is, and maybe you're answering it and I      10 just want to make sure, that if you are being      11 promoted two -- two grades, okay, that it wouldn't      12 be a minimum 10 percent --</p> <p>13 A No --</p> <p>14 Q -- distribution.</p> <p>15 (Overtalking - inaudible.)</p> <p>16 Q It would still be a minimum 5 percent      17 distribution?</p> <p>18 A You're correct.</p> <p>19 Q So -- so the amount of the grades has      20 nothing to do -- that's being promoted, has nothing      21 to do with the minimum step distrib -- step      22 increase?</p> <p>23 A Correct. Provided that the grade      24 difference isn't so much. We've covered that.</p> <p>25 Q Right. Right. Okay. So back to</p>	<p style="text-align: right;">Page 136</p> <p>1 maximum distribution --</p> <p>2 MS. HAMILTON: I'm going to object      3 that it --</p> <p>4 Q (BY MR. BLANKE) -- is that -- is      5 that not correct?</p> <p>6 MS. HAMILTON: -- mischaracterizes --</p> <p>7 THE REPORTER: I'm sorry, say that --</p> <p>8 MS. HAMILTON: I would just object      9 that it mischaracterizes his prior testimony      10 regarding the 20 percent.</p> <p>11 THE WITNESS: Right.</p> <p>12 Q (BY MR. BLANKE) Explain to me why      13 I'm wrong.</p> <p>14 A It's 20 -- it could be 20 percent      15 or --</p> <p>16 Q Oh, that's right.</p> <p>17 A Just the discretionary one could be      18 20 percent, but it could be more.</p> <p>19 Q Yeah, I'm not talking about the      20 discretionary one.</p> <p>21 A Okay.</p> <p>22 Q I'm talking about the standard --</p> <p>23 A Yeah.</p> <p>24 (Overtalking - inaudible.)</p> <p>25 A Well, the standard one, again, could</p>

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<p style="text-align: right;">Page 137</p> <p>1 be more than 20 percent. It --</p> <p>2     <b>Q Gotcha.</b></p> <p>3     A Because you have to go to the bottom.</p> <p>4     <b>Q Right.</b></p> <p>5     A Let's, for instance, you know, if I</p> <p>6 made \$170,000 a year, and I come back to work as,</p> <p>7 you know, a clerk typist making 35,000, and then I</p> <p>8 get promoted to an executive assistant 2 that makes</p> <p>9 75,000 a year, or whatever the minimum that --</p> <p>10 minimum is, you can see that you can conceivably</p> <p>11 get a 100 percent increase, or more. So it really</p> <p>12 depends on those pay ranges.</p> <p>13     <b>Q Gotcha. Okay. You indicated that</b></p> <p>14 <b>these merit step increases are annually and – done</b></p> <p>15 <b>annually? They were at that time back in – when</b></p> <p>16 <b>you were director; right?</b></p> <p>17     A Yes.</p> <p>18     <b>Q And they are automatic unless the</b></p> <p>19 <b>service ratings were unsuccessful in – in some</b></p> <p>20 <b>way.</b></p> <p>21     A Yes.</p> <p>22     <b>Q Okay. And you also indicated that if</b></p> <p>23 <b>a – an appointing authority or a department head</b></p> <p>24 <b>failed to provide service ratings, you would look</b></p> <p>25 <b>at the most recent service rating in order to</b></p>	<p style="text-align: right;">Page 139</p> <p>1 happened, they -- the person would have to have</p> <p>2 some service rating in order to get permanent</p> <p>3 status.</p> <p>4     I've talked about the working test</p> <p>5 period. In order to gain status as a permanent</p> <p>6 civil service employee, the appointing authority</p> <p>7 has to submit, you know, a service rating granting</p> <p>8 them, you know, permanent status.</p> <p>9     Although, I guess if they fail to</p> <p>10 grant -- if they fail to submit the working test</p> <p>11 period one, they would automatically get status</p> <p>12 there too.</p> <p>13     <b>Q So you're saying the automatic annual</b></p> <p>14 <b>increases are going to be provided, regardless of</b></p> <p>15 <b>whether there's any service ratings or not, unless</b></p> <p>16 <b>there is a service rating that's unsuccessful; is</b></p> <p>17 <b>that right?</b></p> <p>18     A That's correct. Unless one were</p> <p>19 never done in the first place, because then there</p> <p>20 would be nothing in the file --</p> <p>21     <b>Q Right.</b></p> <p>22     A -- saying this person were</p> <p>23 successful.</p> <p>24         So if you did have that person who</p> <p>25 gets hired as an attorney 1, let's say, and never</p>
<p style="text-align: right;">Page 138</p> <p>1 <b>determine whether there was an unsuccessful service</b></p> <p>2 <b>rating to disapprove these increases. These pay</b></p> <p>3 <b>increases. Is that what you said?</b></p> <p>4     A What I said is that if -- it would</p> <p>5 default, if they did not conduct the annual service</p> <p>6 rating and did not get it into the Department of</p> <p>7 Personnel by the due date, it would default to the</p> <p>8 last service rating; provided, however, that the</p> <p>9 last service rating were successful --</p> <p>10     <b>Q Right.</b></p> <p>11     A -- or highly successful.</p> <p>12     <b>Q Right.</b></p> <p>13     A If it were unsuccessful, then they</p> <p>14 have to do a rating. One has to be submitted.</p> <p>15 Because --</p> <p>16     <b>Q Okay.</b></p> <p>17     A -- we would not deprive the employee</p> <p>18 of their possible service rating based on the --</p> <p>19 the appointing authority not submitting a service</p> <p>20 rating in time.</p> <p>21     <b>Q What happens if there was no service</b></p> <p>22 <b>rating ever provided?</b></p> <p>23     A Ever provided?</p> <p>24     <b>Q Then what -- then what do you do?</b></p> <p>25     A If that -- well, if that never</p>	<p style="text-align: right;">Page 140</p> <p>1 gets rated, never gets rated at all, you know, they</p> <p>2 would go through their initial working test period,</p> <p>3 which would be six months, it wouldn't have been</p> <p>4 extended if there was no request to do so, and that</p> <p>5 person would default into permanent status, but</p> <p>6 they would have no rating to go back to --</p> <p>7     <b>Q So do they get the automatic</b></p> <p>8 <b>increases under that circumstance?</b></p> <p>9     A No, they would not.</p> <p>10     <b>Q They would not. Okay.</b></p> <p>11     A No.</p> <p>12     <b>Q Now, what happens if somebody is</b></p> <p>13 <b>given service ratings in one position, and then</b></p> <p>14 <b>they're promoted, and then after the promotion</b></p> <p>15 <b>there's no service ratings?</b></p> <p>16     A It would still go back to the last</p> <p>17 service rating done regardless.</p> <p>18     <b>Q Even in the prior --</b></p> <p>19     A Correct.</p> <p>20     <b>Q – junior position they were in?</b></p> <p>21     A Correct.</p> <p>22     <b>Q Okay. And where is all this written?</b></p> <p>23 <b>In – in the pay ordinance, or – or where? Where</b></p> <p>24 <b>is it codified? Where is this -- where do these</b></p> <p>25 <b>rules come from?</b></p>

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<p>1       A There is a variety of sources. One 2       would be the compensation ordinance.</p> <p>3       <b>Q Right.</b></p> <p>4       A One would also be the administrative 5       regulations for the Department of Personnel. And 6       then also it would be in the service rating manual 7       which is approved by the Civil Service Commission.</p> <p>8       <b>Q And how often is that updated or</b> 9       <b>modified? The manual.</b></p> <p>10      A Not very often. I believe the last 11       time was when we worked with the police division 12       and integrated, you know, the police division into 13       our system.</p> <p>14      <b>Q You – you said that, you know, all</b> 15       <b>service – supervisors do not rate their employees</b> 16       <b>and that this is fairly common; right?</b></p> <p>17      A Yes.</p> <p>18      <b>Q Does that mean it's not required? Or</b> 19       <b>it's just commonly not followed?</b></p> <p>20      A It's just commonly not followed.</p> <p>21      <b>Q It still is required --</b></p> <p>22      MR. NORWOOD: Well, let me object --</p> <p>23      <b>Q (BY MR. BLANKE) isn't that correct?</b></p> <p>24      MR. NORWOOD: -- because it calls for 25       a legal conclusion, and it also excludes certain</p>	<p>1       <b>July 2, 2019, to you from Darlene Green. And one,</b> 2       <b>two, three, four paragraphs.</b></p> <p>3       MR. NORWOOD: What page are we on?</p> <p>4       MR. BLANKE: The second page.</p> <p>5       MR. NORWOOD: Okay.</p> <p>6       <b>Q (BY MR. BLANKE) Correct?</b></p> <p>7       A Yes.</p> <p>8       <b>Q Okay. And if you refer to the next</b> 9       <b>page after that, which is also a letter dated on</b> 10       <b>the same date of July 2, 2019, to you from Darlene</b> 11       <b>Green, those letters are not identical, are they?</b></p> <p>12      A That's correct.</p> <p>13      <b>Q Okay. They both say, however, in the</b> 14       <b>first – where am I here. The second one you've</b> 15       <b>already testified, I think it was another exhibit</b> 16       <b>letter, or number –</b></p> <p>17      A Yes.</p> <p>18      <b>Q -- Is your -- it's got your</b> 19       <b>handwriting on it that approves the forced leave;</b> 20       <b>is that correct?</b></p> <p>21      A Yes.</p> <p>22      <b>Q Okay. And that, that is your</b> 23       <b>handwriting, you said that; right?</b></p> <p>24      A Yes.</p> <p>25      <b>Q Yeah. So why did you approve that</b></p>
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<p>1       facts. Subject to that.</p> <p>2       MS. HAMILTON: And I would just 3       object that it's vague and ambiguous, the question.</p> <p>4       <b>Q (BY MR. BLANKE) Go ahead.</b></p> <p>5       A Would you repeat the question? I'm 6       sorry.</p> <p>7       MR. BLANKE: Can you read it back?</p> <p>8       You don't have to read it back. I'll just repeat 9       it.</p> <p>10      <b>Q (BY MR. BLANKE) Are service ratings</b> 11       <b>required by department heads or appointing</b> 12       <b>authorities?</b></p> <p>13      A They are required.</p> <p>14      <b>Q By what?</b></p> <p>15      A By the service rating manual.</p> <p>16      <b>Q Okay. Okay. I've put in front of</b> 17       <b>you Plaintiff's Exhibit O. And it's a big package.</b> 18       <b>I see you've taken the clip off, that's fine, but</b> 19       <b>try not to get it out of order.</b></p> <p>20      A I'll clip it for you.</p> <p>21      <b>Q Okay.</b></p> <p>22      A As long as I can bend it, it'll be 23       all right.</p> <p>24      <b>Q Okay. So if you'll turn to the</b> 25       <b>second page, which purports to be a letter dated</b></p>	<p>1       <b>version of the letter instead of the previous</b> 2       <b>version of the letter?</b></p> <p>3       MR. NORWOOD: Let me object --</p> <p>4       <b>Q (BY MR. BLANKE) Or did you receive</b> 5       <b>both letters? That's the first question, I guess.</b></p> <p>6       A No.</p> <p>7       <b>Q You did not.</b></p> <p>8       A No.</p> <p>9       <b>Q Okay. So your testimony is you never</b> 10       <b>received page 2 of Exhibit O. It's not labeled but</b> 11       <b>just the second page. The one -- the letter</b> 12       <b>identified as the July 2nd letter from -- from</b> 13       <b>Darlene Green to Richard Frank in four paragraphs.</b> 14       <b>You never received that one?</b></p> <p>15      A It's four paragraphs that talks 16       about --</p> <p>17      <b>Q Four paragraphs total?</b></p> <p>18      A -- adequately -- (Quote as read):</p> <p>19       failure to adequately supervise, 20       delegate, or perform his essential 21       duties?</p> <p>22      <b>Q Right.</b></p> <p>23      A I -- I don't recollect ever having 24       seen that.</p> <p>25      <b>Q Okay. Now, if you turn to the next</b></p>

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<p style="text-align: right;">Page 145</p> <p>1 page, this is -- on the top it says Approval of 2 Forced Leave, it's an email dated July 2, 2019, 3 same day, from you to Darlene Green with a copy to 4 Chana Morton; is that correct?</p> <p>5 A Yes.</p> <p>6 Q And again, you are approving the 7 request. Right?</p> <p>8 A Yes.</p> <p>9 Q And you say "pending his 10 pre-termination review." Is that correct?</p> <p>11 A Yes.</p> <p>12 Q Where -- where -- where does it say 13 that? That this is pending -- why did you add that 14 phrase, "pending his pre-termination review?"</p> <p>15 A Because during this initial 16 discussion that I had with Ms. Armstrong on 17 Saturday, the Saturday before this date, they 18 indicated that the allegations against 19 Mr. Garavaglia were so serious as to warrant forced 20 leave in their opinion.</p> <p>21 And I specifically inquired what 22 action, you know, they were seeking, and they 23 explained that they were -- they believed that they 24 would investigate and it may result in a 25 pre-termination review.</p>	<p style="text-align: right;">Page 147</p> <p>1 detail than to say that it may have had something 2 to do with corrections. That's the only thing I 3 knew. So this is --</p> <p>4 Q Now -- now, in this letters to Jim 5 Garavaglia, also dated July 2nd, Miss Green says 6 the same thing you said in your approval email. 7 That (Quote as read):</p> <p>8 you are being placed on official 9 forced leave, pending a 10 pre-termination hearing. 11 They say that. Right?</p> <p>12 A Yes.</p> <p>13 Q Both of them do. Both of these 14 versions of this notice to Mr. Garavaglia of the 15 forced leave say that. Correct?</p> <p>16 A Yes.</p> <p>17 Q So do you recall, when you talked to 18 Miss Armstrong on that Saturday, whether she said 19 that this was going to head up -- this was going to 20 end up as a pre-termination hearing, or anything to 21 that effect?</p> <p>22 A She indicated that it could, pending 23 the investigation. That it could end up as a 24 pre-termination hearing, and we discussed what that 25 procedure entailed.</p>
<p style="text-align: right;">Page 146</p> <p>1 And I advised them at that point.</p> <p>2 Q And then if you look at the next two 3 pages, which are letters from Darlene Green to 4 Mr. Garavaglia, both dated, again, July 2 of 2019, 5 did you ever see those before? To the best of your 6 recollection?</p> <p>7 A The one on July 2nd. It's not 8 numbered, but --</p> <p>9 Q They're all dated July 2nd.</p> <p>10 A Yeah, this first one, no. Again, 11 that's talking about failure to, um, supervise. 12 No, that one I don't recollect having seen.</p> <p>13 Q And the next one?</p> <p>14 A Yes. That one I do. I do recollect 15 seeing.</p> <p>16 Q Now, how do you remember that? Which 17 is which? How do you know the one you saw and the 18 one you didn't see?</p> <p>19 A Because I knew nothing about the 20 specificity of the allegations involving the 21 Municipal Court during my conversation with 22 Ms. Armstrong.</p> <p>23 The only thing I heard was that she 24 said that there were serious allegations of -- of 25 fiscal improprieties, and she went into no greater</p>	<p style="text-align: right;">Page 148</p> <p>1 Q Were you or, to the best of your 2 knowledge, anyone in your office involved in any 3 way with what either of these two letters to 4 Mr. Garavaglia from Defendant Green should or 5 should not say?</p> <p>6 A I indicated during my conversation 7 with Ms. Green's office, Judy Armstrong, on 8 Saturday that they needed to indicate, you know, to 9 me that he was being placed on forced leave, they 10 were requesting to place him on forced leave, and 11 that they needed to notify him of his right to take 12 any accrued compensatory time, vacation time, and 13 also that, you know, the nature of the allegations 14 were serious.</p> <p>15 Q This was on the Saturday 16 conversation?</p> <p>17 A Yes.</p> <p>18 Q Before you even received a written 19 request?</p> <p>20 A Yes.</p> <p>21 Q Okay. But you didn't actually -- 22 when did you receive this -- this second letter 23 dated -- that is addressed to James Garavaglia on 24 July 2nd? When did you receive that one?</p> <p>25 A I received that on Tuesday -- I</p>

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<p style="text-align: right;">Page 149</p> <p>1 believe it was Tuesday, July 3.</p> <p>2       <b>Q Now, how do you remember that?</b></p> <p>3       A Because I remember calling Judy</p> <p>4 Armstrong's and leaving a message that, you know, I</p> <p>5 would be happy to take a look at the -- the letter,</p> <p>6 you know, to Mr. Garavaglia to make sure that it</p> <p>7 was in proper form. And they indicated that they</p> <p>8 would send it to me on Monday.</p> <p>9       But I did not get it Monday. This</p> <p>10 letter was hand-delivered to me a day after I</p> <p>11 expected it and it had already been delivered to</p> <p>12 Mr. Garavaglia.</p> <p>13       <b>Q Now, I also note that, with regard to</b></p> <p>14 <b>this first letter addressed to James Garavaglia on</b></p> <p>15 <b>July 2nd, it says that you were copied in on it.</b></p> <p>16 <b>But that doesn't change your testimony; right?</b></p> <p>17       A No, it does not.</p> <p>18       <b>Q Okay. Do you or anyone in your</b></p> <p>19 <b>office normally have any involvement in how the</b></p> <p>20 <b>letters to the employee advising of the forced</b></p> <p>21 <b>leave should be delivered? Whether by –</b></p> <p>22       A Delivered?</p> <p>23       <b>Q Delivered. By certified mail or</b></p> <p>24 <b>regular mail or hand delivery? Do you have any</b></p> <p>25 <b>input into that?</b></p>	<p style="text-align: right;">Page 151</p> <p>1 are being pre-terminated, don't live at the address</p> <p>2 where they really do live, or they've moved, or</p> <p>3 they simply will refuse to accept a Certified</p> <p>4 letter, and that becomes a problem for us and we</p> <p>5 want to ensure proper service.</p> <p>6       So we recommend to the appointing</p> <p>7 authorities, and I believe the law department, on</p> <p>8 information and belief, also has -- you know, tells</p> <p>9 employees --</p> <p>10       <b>MS. HAMILTON:</b> And I'm not going to</p> <p>11 -- I'm going to --</p> <p>12       <b>THE WITNESS:</b> Okay.</p> <p>13       <b>MS. HAMILTON:</b> -- advise you again</p> <p>14 not to get into the law department --</p> <p>15       <b>THE WITNESS:</b> Okay.</p> <p>16       <b>MS. HAMILTON:</b> -- conversations.</p> <p>17       <b>THE WITNESS:</b> Okay.</p> <p>18       A That's our position. That that's</p> <p>19 what we tell employees -- or supervisors --</p> <p>20       <b>Q (BY MR. BLANKE)</b> If you go back to</p> <p>21 the third -- the third page where your approval</p> <p>22 handwriting is on the letter to you from Darlene</p> <p>23 Green where it says "Approved"?</p> <p>24       A Yes.</p> <p>25       <b>Q Those are your initials; is that</b></p>
<p style="text-align: right;">Page 150</p> <p>1       A We typically advise employees to send</p> <p>2 them out, you know, Certified letter, and also, if</p> <p>3 possible, in person, to ensure service.</p> <p>4       <b>Q Did that come up in the -- in the</b></p> <p>5 <b>conversation with Judy Armstrong?</b></p> <p>6       A Not to my recollection.</p> <p>7       <b>Q Do you know how these letters were</b></p> <p>8 <b>delivered --</b></p> <p>9       A No --</p> <p>10       <b>Q -- to Jim Garavaglia?</b></p> <p>11       A Do I know how they were delivered?</p> <p>12       <b>Q Yes.</b></p> <p>13       A No, I don't.</p> <p>14       <b>Q And -- and I'm not sure I understand</b></p> <p>15 <b>-- if I understand you correctly, and correct me if</b></p> <p>16 <b>I'm mischaracterizing what you just said. You're</b></p> <p>17 <b>saying that they should be delivered by Certified</b></p> <p>18 <b>mail?</b></p> <p>19       A We recommend that they go out two</p> <p>20 ways, you know, either through Certified or</p> <p>21 Registered mail, and also, if possible,</p> <p>22 hand-delivered. Because we don't want the</p> <p>23 situation to occur where an employee says, "I never</p> <p>24 got the notice."</p> <p>25       We have situations where employees</p>	<p style="text-align: right;">Page 152</p> <p>1       <b>right? Is that supposed to be RF or -- I can't</b></p> <p>2 <b>tell.</b></p> <p>3       A Yes.</p> <p>4       <b>Q Okay. And then that was July 2nd.</b></p> <p>5 <b>You approved this on July 2nd. Correct?</b></p> <p>6       A Yes.</p> <p>7       <b>Q Okay. So when you approved the</b></p> <p>8 <b>forced leave, had you seen the letter to</b></p> <p>9 <b>Mr. Garavaglia? Either one of them?</b></p> <p>10       A No.</p> <p>11       <b>Q So your approval of the forced leave</b></p> <p>12 <b>is not in any way predicated upon proper notice</b></p> <p>13 <b>being given to the employee; is that a fair</b></p> <p>14 <b>statement?</b></p> <p>15       A That's fair.</p> <p>16       <b>Q Okay. Now, the hearing on the forced</b></p> <p>17 <b>leave, the first forced leave, the one we're</b></p> <p>18 <b>talking about here on July 2nd; okay? The hearing</b></p> <p>19 <b>on that before the Civil Service Commission, was</b></p> <p>20 <b>initially scheduled for July 23rd. Is that</b></p> <p>21 <b>correct?</b></p> <p>22       A I'd have to check the dates. I'm --</p> <p>23 I relied on my --</p> <p>24       <b>Q Okay.</b></p> <p>25       A -- employee to schedule that for me.</p>

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<p style="text-align: right;">Page 153</p> <p>1 Q And -- and which employee would that 2 be? 3 A At the time, I believe it was Ashley 4 McClain. 5 Q Okay. Let me direct your attention 6 -- oh, boy. Let's see. One, two, three, four, 7 five, six, seven, the eighth page of paragraph O, 8 which looks like this. You probably recognize 9 that. 10 A Yeah, is that looks like the -- 11 (Overtalking - inaudible.) 12 A -- Notice of Institution to case? 13 MS. HAMILTON: Usually the ones 14 before that are (inaudible). 15 MR. BLANKE: Here. Counsel? 16 MR. NORWOOD: Yep. Got it. 17 THE WITNESS: I'm slow, I'm sorry. 18 Is it that far in? 19 MS. HAMILTON: Eighth page. 20 MR. BLANKE: You may be past eight. 21 MS. HAMILTON: Yeah. 22 MR. BLANKE: Well, it looks like 23 this. Let's make sure we're all on the same page. 24 THE WITNESS: I know what one looks 25 like, I'm --</p>	<p style="text-align: right;">Page 155</p> <p>1 Q We on the same page? 2 A Yes. 3 Q Okay. Does that provide a hearing 4 date? 5 A Yes. 6 Q And that's July 23rd; correct? 7 A Yes. 8 Q And the parties were advised of that 9 by Ashley McClain, through this notice, on or about 10 July 11th. Is that correct? 11 MS. HAMILTON: Objection, foundation. 12 Q (BY MR. BLANKE) Well -- 13 MS. HAMILTON: You can answer if you 14 know. 15 Q (BY MR. BLANKE) -- the email from 16 before that, the first -- the page right before 17 that with the email that we were talking about? 18 A Yeah, that's -- the certificate of 19 service does say that. 20 Q July 11, okay. 21 A Yeah. 22 Q What was Ashley McClain? She was an 23 administrative assistant, but what was her duties? 24 A She served as the administrative 25 assistant to the Civil Service Commission.</p>
<p style="text-align: right;">Page 154</p> <p>1 MR. BLANKE: It says on the top, the 2 first one is a caption, it's on City of St. Louis 3 stationery and it's -- 4 MS. HAMILTON: That's the cover. 5 Right here. You're -- you're at -- the one that -- 6 next one. That's the cover. 7 THE WITNESS: "In the Matter of." 8 Got it. I'm sorry. Okay. 9 Q (BY MR. BLANKE) So, so counsel for 10 the City is directing your attention to an email 11 that precedes what I was talking about, from Ashley 12 McClain? 13 A Yes. 14 Q To Nancy Kistler and Paul Schmitz 15 dated July 11; right? 16 A Yes. 17 Q Saying (Quote as read): 18 Please see the attached Notice of 19 Hearing. 20 Correct? 21 A Yes. 22 Q Okay. And then after that is the 23 Notice of Hearing; right? It says Notice of 24 Institution of Case and Hearing. 25 A Yes.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q Okay. Was she, then, as a secretary 2 to the Commission, was she under you in that 3 regard? 4 A Yes. 5 Q Okay. So you were her supervisor? 6 A Yes. 7 Q In that -- in that capacity? 8 A Yes. 9 Q Yes. Okay. Were you involved in 10 selecting the hearing date in any way? 11 A No. 12 Q Turn a couple pages down to the page 13 -- this one does have a Bates stamp. In the lower 14 right-hand corner it's Bates stamped GARAVAGLIA 15 110. On the top it's a Memorandum to Nancy Kistler 16 from Chana Martin (sic). Do you see that? 17 A I do see it. 18 Q Okay. And please go to the end of 19 that, and there is another memorandum that follows 20 that which starts on GARAVAGLIA 105 on the bottom, 21 and this is from Darlene Green to Nancy Kistler. 22 Do you see that? 23 A Yes. 24 Q Okay. Did you see either of these 25 memorandum at any time before you prepared for this</p>

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<p>1 deposition? I mean when you were a director. Did      2 you see either of those? When you were a director.      3 When you were the director of the personnel      4 department.</p> <p>5 A I don't recall them, no.</p> <p>6 Q You don't recall, or you don't recall      7 seeing them?</p> <p>8 A I don't recall seeing them.</p> <p>9 Q Okay.</p> <p>10 A This -- I'm looking at the first one      11 still.</p> <p>12 Q Sure. Take your time. So I take it      13 if you don't recall seeing them, you don't know      14 whether you reviewed them or not; right?</p> <p>15 A I did not review the first one.</p> <p>16 Q Okay.</p> <p>17 A I'm looking at the --</p> <p>18 MS. HAMILTON: 105 at the bottom for      19 the second one.</p> <p>20 A I do recall seeing the letter to      21 Nancy Kistler from Comptroller Green dated July 12,      22 2019. That one I do remember seeing.</p> <p>23 Q (BY MR. BLANKE) And how do you      24 recall that?</p> <p>25 A Because it looks familiar.</p>	<p>1 Defendant Green wrote this requesting a forced      2 leave at this time, when Mr. Garavaglia was already      3 on forced leave?</p> <p>4 A No.</p> <p>5 Q You have no idea?</p> <p>6 A No.</p> <p>7 Q The reasons given in this letter to      8 Richard -- to you from Darlene Green are the same      9 as the letter that you reviewed on July 2nd.      10 Correct?</p> <p>11 A I believe I've already testified that      12 I didn't see that.</p> <p>13 MR. NORWOOD: Well, let me --</p> <p>14 Q (BY MR. BLANKE) No, no, no. I'm      15 talking about the one you did see.</p> <p>16 MR. NORWOOD: Well, let me object,      17 because it assumes he did see it.</p> <p>18 Q (BY MR. BLANKE) Okay, well, then      19 maybe I'm mistaken. You -- you obviously saw --</p> <p>20 A No, Counselor. I already testified      21 that the first of the two --</p> <p>22 Q Oh, I said did you hear about them.</p> <p>23 A -- on July 2, I did not see that.      24 And I -- I did not.</p> <p>25 Q Yeah, I'm -- I'm sorry. I wanted you</p>
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<p>1 Q Okay.</p> <p>2 A The contents look familiar.</p> <p>3 Q Do you remember when you may have      4 seen it?</p> <p>5 A I can only assume that it was      6 sometime around the date that it was issued.</p> <p>7 Q Do you recall any discussions with      8 Comptroller Green or anyone in her office about it?</p> <p>9 A No.</p> <p>10 Q Okay. Turn the page again. This is      11 the page right after the page GARAVAGLIA 106. So      12 it's right after that second memoranda that you did      13 see. There's a letter to you, dated July 15, from      14 Darlene Green; correct?</p> <p>15 A Yes.</p> <p>16 Q And then if you turn the page,      17 there's another letter to you -- I mean then      18 there's a letter to Jim Garavaglia from Darlene      19 Green as well; right?</p> <p>20 A Yes.</p> <p>21 Q Okay. And these are both dated      22 July 15; correct?</p> <p>23 A Yes.</p> <p>24 Q Okay. The letter from Darlene Green      25 to you dated July 15, 2019, do you know why</p>	<p>1 to compare the letter that you approved -- okay,      2 you obviously saw that one.</p> <p>3 A Yes.</p> <p>4 Q Okay. Yeah. -- with the letter of      5 July 15th that we're looking at now.</p> <p>6 MR. NORWOOD: Well, and I'm objecting      7 because that assumes he received that July 15 --</p> <p>8 MS. HAMILTON: July 15.</p> <p>9 MR. NORWOOD: -- 2019 letter.</p> <p>10 Q (BY MR. BLANKE) Let me add that      11 that's the first question.</p> <p>12 A Yeah.</p> <p>13 Q Did -- did you?</p> <p>14 A I did not receive the July 15th      15 letter, no.</p> <p>16 Q And how do you know that?</p> <p>17 A Because I've never seen it. And one      18 of the reasons I know is because I didn't know      19 anything about any issues that were brought up      20 about Muni Court. Or failure to supervise the      21 employees. That's not something that was discussed      22 with me.</p> <p>23 Q Okay.</p> <p>24 MS. HAMILTON: Is this a good time      25 for a break?</p>

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<p>1 MR. BLANKE: If you want one, sure.      2 MS. HAMILTON: Yeah, I'd love one.      3 MR. BLANKE: Okay.      4 MS. HAMILTON: If you don't mind.      5 THE VIDEOGRAPHER: Time is 2:12 PM,      6 we are off the record.      7 (Off the record.)      8 THE VIDEOGRAPHER: The time is 2:31,      9 we are back on the record.</p> <p>10 Q (BY MR. BLANKE) Okay. Where did we      11 leave off. We were looking at this July 15th      12 letter to Mr. Garavaglia, that you did not remember      13 seeing it, I think?</p> <p>14 A Yes.      15 MR. NORWOOD: Let me object, it      16 mischaracterizes testimony. He said he didn't see      17 it.      18 MR. BLANKE: That's what I said.      19 MR. NORWOOD: No, you said I don't --      20 he didn't remember seeing it, which is different.      21 MR. BLANKE: Oh, gotcha. Okay.</p> <p>22 Q (BY MR. BLANKE) Turn the page, there      23 is a Certified Mail return there, but turn the page      24 again to this email from Linda Thomas to you on      25 July 17th at 2:35 PM which begins with the words --</p>	<p>1 including termination.      2 Wanted to get this to you while my      3 mind is still fresh on what I said so      4 people don't misquote me, and know      5 you -- and you know what I mean.      6 MR. NORWOOD: You know who I mean.</p> <p>7 A Or who I mean, sorry.</p> <p>8 Q (BY MR. BLANKE) First question I      9 have about this is, did you advise or suggest to      10 Linda Thomas that she instruct Defendant Green to      11 withdraw her initial forced leave request?</p> <p>12 A No.</p> <p>13 Q Did she -- did you know that she      14 would do that before she did it?</p> <p>15 A No.</p> <p>16 Q Do you know why she did it?</p> <p>17 A After the fact, I believe it was,      18 Linda had told me, again, that she had spoken to --      19 she had received a phone call from Comptroller      20 Green about the procedures for 117 and forced leave      21 because the -- there were, um, a couple of clerical      22 omissions in the initial letter to Mr. Garavaglia      23 about the reason for the forced leave.</p> <p>24 Q Did she say what those additional      25 reasons were?</p>
<p>1 well, that's from you to Linda Thomas on July 17th      2 at 2:35, where you're thanking her for the previous      3 email from her to you at 2:33. Correct?</p> <p>4 A Yes.      5 Q Okay. Can you please read into the      6 record what she wrote on the email to you at 2:33?</p> <p>7 A (Quote as read):      8 Rick, I told the Comptroller to      9 withdraw her request for forced leave      10 on JG. All she has to do is ask you      11 to withdraw -- ask for you to      12 withdraw the request and she has to      13 give him a copy and then give him      14 back any of his time he has used.      15 Then I told her she could send you a      16 letter requesting force leave --      17 should be forced leave -- force leave      18 again, give him a copy, and tell him      19 he is being put on forced leave      20 pending investigation. The reason      21 for the forced leave would be he has      22 access to a lot of confidential files      23 and computer systems and the      24 investigation would lead to      25 disciplinary action up to and</p>	<p>1 A Yeah, the serious allegations      2 regarding fiscal matters.</p> <p>3 Q But did she specify to you what they      4 were?</p> <p>5 A No.</p> <p>6 Q The last sentence, (Quote as read):      7 Wanted to get this to you while my      8 mind is still fresh on what I said so      9 people don't misquote me, and you      10 know who I mean.</p> <p>11 What does that mean?</p> <p>12 MR. NORWOOD: Well, let me object,      13 calls for speculation on what was in Linda Thomas's      14 mind when she sent that email.</p> <p>15 MS. HAMILTON: You can answer.</p> <p>16 A I believe she is referring to Nancy      17 Kistler, who is the Deputy City Counselor.</p> <p>18 Q (BY MR. BLANKE) And what's the      19 reason for that? Why do you believe that?</p> <p>20 MR. NORWOOD: Let me object,      21 irrelevant.</p> <p>22 THE WITNESS: Oh. Oh, sorry.</p> <p>23 MS. HAMILTON: And what I'll just say      24 is you are welcome to answer, I just -- do not get      25 into any privileged conversations.</p>

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<p>1       A All right. It's just that Nancy was 2 -- was assisting Comptroller with the process. 3       <b>Q (BY MR. BLANKE) Great.</b> 4       A And -- and also discussing it with 5 me. 6       <b>Q Okay. How confident are you or that</b> 7 -- <b>of that?</b> 8       A Very confident. 9       <b>Q Oh, okay. Now, turn the page again.</b> 10      <b>These three pages, the next three pages, are all</b> 11      <b>dated July 18, 2019. They all purport to be</b> 12      <b>written by Darlene Green to you; correct?</b> 13       A Yes. 14       <b>Q Okay. What's your under -- take a</b> 15      <b>look at these three, take -- take a moment, and</b> 16      <b>read them over. And what's if -- what's your</b> 17      <b>understanding of the -- what -- why are there three</b> 18      <b>-- three of these? What's -- what are the</b> 19      <b>differences, or what's -- do you have an</b> 20      <b>understanding of --</b> 21       A I do. 22       <b>Q -- why there are three letters?</b> 23       A I do. It all goes back to the 24 original conversation I had with Judy Armstrong 25 that the reason for the forced leave was that there</p>	<p>1 respect to, when you talk about "those versions," 2 what versions are we talking about? 3       <b>Q (BY MR. BLANKE) All right, well, I'm</b> 4      <b>not suggesting they're intended to be the same</b> 5 letter. I'm just saying there are three letters, 6 all dated July 18, from Darlene Green to Richard 7 Frank. And my question is -- 8       MR. NORWOOD: Well, let me -- 9       <b>Q (BY MR. BLANKE) -- do you have an</b> 10      <b>understanding of what those three letters are</b> 11      <b>about? That's the first question. You've already</b> 12      <b>answered it, I think; right?</b> 13      <b>My second question is --</b> 14       A Yes. 15       <b>Q -- did you see all three of them?</b> 16      <b>You know, at the time -- or at or around the time</b> 17      <b>they were written, in July?</b> 18       A I don't recall seeing, out of those 19 three letters, the second one. I do recall seeing 20 the one which I initialed. 21       <b>Q Okay. The first one is just advising</b> 22      <b>you that she's withdrawing her forced leave</b> 23      <b>request; correct?</b> 24       A Correct. 25       <b>Q You don't recall seeing that?</b></p>
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<p>1      were allegations of serious fiscal improprieties, 2 and, you know, um, I had suggested that they should 3 include that in the letter of forced leave to 4 Mr. Garavaglia. 5       <b>Q Now, this is the second letter;</b> 6      <b>right? Of forced leave?</b> 7       A Yes. 8       <b>Q And if you look at the third version,</b> 9 again, it has your handwriting approving it on -- 10 on the same day, 7/18/19. 11      MR. NORWOOD: Let me object to the 12 reference to the "third version." 13      MR. BLANKE: I'm sorry. The third 14 letter that we were talking about. Let's see if 15 there's any identification on this that I can use. 16 Anyway. 17       A Yes, I have it. 18       <b>Q (BY MR. BLANKE) You approved a</b> 19 letter that is addressed to you on July 18 from 20 Darlene Green. Correct? 21       A Yes. 22       <b>Q Is that the only -- the letter that</b> 23 has your approval on it, is that the only one of 24 those versions that you saw? Or do you know? 25       MR. NORWOOD: Let me object with</p>	<p>1       A Yes. I said. 2       <b>Q Okay. I'm sorry.</b> 3       A The second one is the one I said I 4 didn't recall seeing. 5       <b>Q Gotcha. The second and third letters</b> 6 are -- are -- they might be identical, I don't -- 7 don't even -- 8       A Pardon me. I just misspoke then, 9 sir. I -- I did see -- the second letter is -- 10       <b>Q The second --</b> 11       A -- that you're referring to is 12 identical to the third. 13       <b>Q Right.</b> 14       A Except I -- the third one just 15 contains my initials and approval. 16       <b>Q Right you are. Okay.</b> 17       THE VIDEOGRAPHER: Mr. Frank, could I 18 have you flip your mic to the outside of your lapel 19 as opposed to the inside? 20       THE WITNESS: Oh, dear. 21       THE VIDEOGRAPHER: I'm hearing you, 22 but it's mushy. There you go. 23       THE WITNESS: Haven't gotten any 24 smarter after age 60, that's for sure. 25       MR. NORWOOD: Well, don't worry, I do</p>

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<p style="text-align: center;">Page 169</p> <p>1 that all the time myself.</p> <p>2 Q (BY MR. BLANKE) Now turn the page</p> <p>3 again.</p> <p>4 A Okay.</p> <p>5 Q And this is a page where it says</p> <p>6 "Letter to James Garavaglia" in bold letters at the</p> <p>7 top?</p> <p>8 A Yes.</p> <p>9 Q It's an email, purports to be an</p> <p>10 email of July 18, 2019, from Darlene -- from Chana</p> <p>11 Martin -- Morton to you. Is that correct?</p> <p>12 A Yes.</p> <p>13 Q And it refers to a letter that she</p> <p>14 claims was hand-delivered to Mr. Garavaglia today,</p> <p>15 meaning July 18th. Is that right?</p> <p>16 A That's what the memo says, yes.</p> <p>17 Q And there is, at the bottom of this</p> <p>18 email there is a -- an indication that it was an</p> <p>19 attachment at -- to the -- to the email; right?</p> <p>20 A Yes.</p> <p>21 Q And then go to the next page, and</p> <p>22 what do you see there?</p> <p>23 A This is the letter notifying</p> <p>24 Mr. Garavaglia that he's being placed on forced</p> <p>25 leave pending an internal investigation into some</p>	<p style="text-align: center;">Page 171</p> <p>1 "improprieties" to strengthen and</p> <p>2 clarify (without being too</p> <p>3 restrictive)? Thanks.</p> <p>4 Q And then above that, there is an</p> <p>5 email from Chana Morton on behalf of Darlene Green</p> <p>6 saying, (Quote as read):</p> <p>7 Please see the attached updated</p> <p>8 request.</p> <p>9 Is that right?</p> <p>10 A Yes.</p> <p>11 Q Were there any oral conversations</p> <p>12 between you and Chana Morton about all of these</p> <p>13 letters, or versions?</p> <p>14 A I believe there was one conversation</p> <p>15 -- two conversations that I had with Chana maybe in</p> <p>16 total. One was the one on Saturday where she</p> <p>17 connected the phone call, and then this one was</p> <p>18 regarding me telling her, you know, that it was</p> <p>19 important to include what we -- we talked about in</p> <p>20 the original conversation on that Saturday before</p> <p>21 July 2nd. That these were serious allegations of</p> <p>22 fiscal impropriety.</p> <p>23 Q Did you have any conversations with</p> <p>24 Darlene Green about this matter?</p> <p>25 A No.</p>
<p style="text-align: center;">Page 170</p> <p>1 improprieties that have come to light, and advising</p> <p>2 him of his right to use any accumulated leave,</p> <p>3 vacation, or comp time.</p> <p>4 Q And -- and the message here is that</p> <p>5 it was hand-delivered. Right?</p> <p>6 A Yes.</p> <p>7 Q Okay. And if you'll turn the page</p> <p>8 again, and now it says "Revised Request Letter" on</p> <p>9 the top. Are you on that page?</p> <p>10 A Yes.</p> <p>11 Q Okay. Now, this is actually an email</p> <p>12 stream that we're looking at on this page, appears</p> <p>13 to be. At the bottom is an email from Chana Morton</p> <p>14 to you dated July 18 at 2:50 PM?</p> <p>15 A Yes.</p> <p>16 Q And it says, (Quote as read):</p> <p>17 My apologies - please see the</p> <p>18 attached revised letter.</p> <p>19 Correct?</p> <p>20 A Yes.</p> <p>21 Q And then you responded at 2:52 to</p> <p>22 Chana Morton by writing what?</p> <p>23 A (Quote as read):</p> <p>24 Could you also add the word</p> <p>25 "serious" and/or "fiscal" before</p>	<p style="text-align: center;">Page 172</p> <p>1 Q Okay. Then, at 3:24 that afternoon,</p> <p>2 on the very top, you write Comptroller Green back</p> <p>3 saying that you're authorizing the second forced</p> <p>4 leave pending your investigation; correct?</p> <p>5 A Yes.</p> <p>6 Q Now -- hold on one moment. If you go</p> <p>7 back to the letter that you did not see, to James</p> <p>8 Garavaglia dated July 15th, the Certified letter</p> <p>9 I'm talking about.</p> <p>10 A Yes. I have it.</p> <p>11 Q This letter doesn't contain those</p> <p>12 added words about "serious" and "fiscal," does it?</p> <p>13 A No, it does not.</p> <p>14 Q So then the letter dated July 18 to</p> <p>15 you that you approved does contain those words, the</p> <p>16 "serious fiscal improprieties." Correct?</p> <p>17 A Yes.</p> <p>18 Q So the request to you was updated?</p> <p>19 A Yes.</p> <p>20 Q Per your instructions.</p> <p>21 A Yes.</p> <p>22 Q But the letter to Mr. Garavaglia was</p> <p>23 not.</p> <p>24 MR. NORWOOD: Well, let me object --</p> <p>25 MR. BLANKE: Let me ask the question</p>

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<p>1 first.</p> <p>2 MR. NORWOOD: Well, let me object --</p> <p>3 Q (BY MR. BLANKE) Does that seem</p> <p>4 correct to you?</p> <p>5 MR. NORWOOD: Let me object, because</p> <p>6 you say "the letter to Mr. Garavaglia," and it</p> <p>7 assumes facts not in evidence.</p> <p>8 First of all, it's vague and</p> <p>9 ambiguous as to what letter, and it's -- and so if</p> <p>10 you --</p> <p>11 MR. BLANKE: I can correct that very</p> <p>12 easily.</p> <p>13 MR. NORWOOD: I'm sorry -- well,</p> <p>14 please.</p> <p>15 MR. BLANKE: Okay.</p> <p>16 Q (BY MR. BLANKE) So I'm saying that</p> <p>17 the letter that we just talked about of July 15th</p> <p>18 that has a Certified return in back of it --</p> <p>19 MR. NORWOOD: Well, let me object to</p> <p>20 that too --</p> <p>21 (Overtalking - inaudible.)</p> <p>22 Q (BY MR. BLANKE) -- that was provided</p> <p>23 to us by --</p> <p>24 MR. NORWOOD: Let me object to that,</p> <p>25 let me object, because this letter -- there's no</p>	<p>1 evidence.</p> <p>2 MR. NORWOOD: Well, because it's a</p> <p>3 mis -- it's a fact that he never got the letter.</p> <p>4 Because it's not in his file.</p> <p>5 MR. BLANKE: Well, let the record</p> <p>6 reflect that neither the City nor Defendant Green</p> <p>7 has provided us with a letter, other than this one,</p> <p>8 that was sent to Mr. Garavaglia.</p> <p>9 MR. NORWOOD: That's absolutely</p> <p>10 false.</p> <p>11 MS. HAMILTON: Incorrect.</p> <p>12 MR. BLANKE: Oh, really? Where is</p> <p>13 it?</p> <p>14 MR. NORWOOD: Because the letters</p> <p>15 that you provided to us --</p> <p>16 MR. BLANKE: Yeah.</p> <p>17 MR. NORWOOD: -- are from your</p> <p>18 client's files and from the files that Comptroller</p> <p>19 Green did provide to counsel at the Civil Service</p> <p>20 Commission stage. All of which have your Bates</p> <p>21 labels on them.</p> <p>22 MS. HAMILTON: And every -- I'll just</p> <p>23 add --</p> <p>24 MR. BLANKE: So -- so let me.</p> <p>25 THE REPORTER: Wait.</p>
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<p>1 evidence in the record that ties this certification</p> <p>2 to this letter.</p> <p>3 MR. BLANKE: Except that this is how</p> <p>4 it was presented to us by you guys.</p> <p>5 MR. NORWOOD: It -- it -- we don't</p> <p>6 know that either, because it's not Bates stamped.</p> <p>7 So we don't know where this document came from as</p> <p>8 it relates to these --</p> <p>9 MR. BLANKE: They do know.</p> <p>10 MR. NORWOOD: -- two letters. Right?</p> <p>11 MR. BLANKE: Somebody knows, because</p> <p>12 you provided it to us.</p> <p>13 MR. NORWOOD: Well, but let me say</p> <p>14 this, Counsel, because I think -- I don't know if</p> <p>15 it's intentional or inadvertent, but you produced</p> <p>16 records to us, purportedly what you had in your</p> <p>17 files. And your files don't include this letter of</p> <p>18 July 15, 2019 --</p> <p>19 MR. BLANKE: That's right.</p> <p>20 MR. NORWOOD: -- which suggest that</p> <p>21 your client never received it. And so, so that to</p> <p>22 the extent that you're suggesting your client did,</p> <p>23 I think it's improper.</p> <p>24 MR. BLANKE: I see.</p> <p>25 MS. HAMILTON: Because it's not in</p>	<p>1 MS. HAMILTON: -- I'll just add that</p> <p>2 the documents that are in this folder of today,</p> <p>3 Exhibits 2 --</p> <p>4 MR. BLANKE: Yeah.</p> <p>5 MS. HAMILTON: -- through at least 7,</p> <p>6 are Bates stamped, have been exchanged in</p> <p>7 discovery.</p> <p>8 MR. NORWOOD: And the only point I'm</p> <p>9 making, Counsel, is that your client didn't receive</p> <p>10 the letter because in none of the documents you</p> <p>11 produced is this letter part of the mix. And it's</p> <p>12 not Bates stamped with anybody's Bates stamp.</p> <p>13 So I think it's improper for you to</p> <p>14 suggest that there was a letter your client</p> <p>15 received when you can simply talk to your client</p> <p>16 right now, so we can get this straight, to figure</p> <p>17 out whether or not he received it.</p> <p>18 MS. HAMILTON: Well -- well, my -- my</p> <p>19 objection would be that it just is not in evidence;</p> <p>20 right? That --</p> <p>21 MR. BLANKE: This is not a</p> <p>22 conference.</p> <p>23 MS. HAMILTON: So.</p> <p>24 MR. BLANKE: You made -- you've made</p> <p>25 your objections and I'll withdraw the question, and</p>

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<p>1 here is my next question.</p> <p>2 Q (BY MR. BLANKE) If you'll look in</p> <p>3 the Defendant Green's book of exhibits, turn to</p> <p>4 Exhibit Number 7, please.</p> <p>5 A Okay.</p> <p>6 Q That purports to be a letter dated</p> <p>7 July 18 from Darlene Green to James Garavaglia;</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q It says on the letter that it was</p> <p>11 hand-delivered on the 19th. Correct?</p> <p>12 A Yes.</p> <p>13 Q So it says on the letter that it was</p> <p>14 delivered delay – the day after the letter was</p> <p>15 written. Correct?</p> <p>16 A Yes.</p> <p>17 Q Which is mysterious, would you not</p> <p>18 agree?</p> <p>19 MR. NORWOOD: Well, let me object, I</p> <p>20 mean --</p> <p>21 MS. HAMILTON: Calls for speculation</p> <p>22 and is irrelevant.</p> <p>23 Q (BY MR. BLANKE) And it also says on</p> <p>24 the bottom of the letter --</p> <p>25 MR. NORWOOD: Well, hold on a second,</p>	<p>1 MR. NORWOOD: Yeah.</p> <p>2 MS. HAMILTON: Certainly.</p> <p>3 Q (BY MR. BLANKE) The bottom of –</p> <p>4 of this exhibit says "Letter Revised 7/18/19."</p> <p>5 Correct?</p> <p>6 A Yes. That's correct.</p> <p>7 Q Okay. Have you seen this?</p> <p>8 A This letter?</p> <p>9 Q Yes.</p> <p>10 A I believe this letter looks similar,</p> <p>11 I've seen so many letters today. No. This one is</p> <p>12 not one that I -- I saw.</p> <p>13 Q Okay. And how do you know that?</p> <p>14 A Because I didn't see the letters, to</p> <p>15 the best of my recollection, that went to the</p> <p>16 employee. As director of personnel, I only saw</p> <p>17 letters that would come to me asking for the forced</p> <p>18 leave.</p> <p>19 Q Okay. Do you have any personal</p> <p>20 knowledge as to whether this – this Exhibit</p> <p>21 Number 7 was delivered? Hand-delivered?</p> <p>22 A No, I have no personal knowledge</p> <p>23 about that.</p> <p>24 Q Do you ordinarily review the letters</p> <p>25 to employees notifying him or her that they've been</p>
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<p>1 hold on a second. Are you -- I mean, was that a</p> <p>2 question? We objected. I mean, are you abandoning</p> <p>3 your question?</p> <p>4 Q (BY MR. BLANKE) Oh, I thought you</p> <p>5 answered. Didn't you answer?</p> <p>6 A No, I didn't. I do not believe it's</p> <p>7 mysterious. If you look at the time, you know, I</p> <p>8 caught what I discussed with Chana to be a clerical</p> <p>9 error and not capturing the serious allegations</p> <p>10 which we discussed in the first Saturday, the very</p> <p>11 beginning, and she corrected it but, you know, we</p> <p>12 had the Comptroller and, you know, who, we need to</p> <p>13 sign these things and it was already 3:30 in the</p> <p>14 afternoon.</p> <p>15 So I'm not surprised that this would</p> <p>16 have gotten delivered, hand-delivered, the next</p> <p>17 day.</p> <p>18 MR. BLANKE: No, no, I'm not -- I'm</p> <p>19 not saying it was mysterious that it would have</p> <p>20 been hand-delivered the next day. I'm saying it's</p> <p>21 mysterious that they're saying it was delivered the</p> <p>22 next day before it was delivered.</p> <p>23 A I'm not --</p> <p>24 Q (BY MR. BLANKE) Never mind. It's</p> <p>25 not important.</p>	<p>1 placed on forced leave before you approve it?</p> <p>2 A Never.</p> <p>3 Q Okay. This letter, Exhibit 7, says</p> <p>4 you were copied in on it as well. Correct?</p> <p>5 A Yeah, it does say that I'm copied.</p> <p>6 Q But you did not see it. Is that your</p> <p>7 testimony?</p> <p>8 A I don't recollect it. This is a</p> <p>9 letter that my secretary would have kept.</p> <p>10 Q And you don't ordinarily see them.</p> <p>11 A No, I do not.</p> <p>12 Q Is that because you just don't read</p> <p>13 them, or they're just normally not sent to you? I</p> <p>14 mean, how -- how is it that you don't ordinarily</p> <p>15 see them?</p> <p>16 A With all --</p> <p>17 MR. NORWOOD: Let me object. First</p> <p>18 of all, it's a compound question, I think it's</p> <p>19 badgering this witness. But subject to that.</p> <p>20 MS. HAMILTON: You can answer.</p> <p>21 Q (BY MR. BLANKE) I certainly don't</p> <p>22 mean to badger you. I'm just asking.</p> <p>23 A I worked 7:30 in the morning until 7</p> <p>24 at night, ran two pension systems, was a chief</p> <p>25 negotiator for twelve unions, approved all police</p>

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<p>1 discipline, and up until 2019, reviewed every 2 single piece of discipline in this City.</p> <p>3 Q Okay. So it's a fair --</p> <p>4 A And so --</p> <p>5 MS. HAMILTON: You can finish.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 MS. HAMILTON: Carry on.</p> <p>8 A And kept extensive records all the 9 way back from 2004 until I left, when we started 10 following our retention rules, and kept files on 11 numerous matters and legal opinions.</p> <p>12 So I -- I don't mean to be -- it 13 sounds a little defensive --</p> <p>14 Q (BY MR. BLANKE) No, but I mean --</p> <p>15 A -- but I just -- there's no way, you 16 know, I was doing -- there's like one person who 17 runs PRS, one person who runs FRS, and in addition 18 to all this, I ran two pension systems that 19 performed really well.</p> <p>20 Q So there's no way what?</p> <p>21 A There's no possible way that I could 22 keep records of all fitness for duties, or letters 23 to individual employees. That -- it's just not --</p> <p>24 Q Well, yeah, I know, but my -- my 25 question is -- and, you know, look, if you don't</p>	<p>1 Q One more question about all this. 2 A Mm-hmm.</p> <p>3 Q And that is, why did you specifically 4 advise the Comptroller's office to put the words 5 "serious" and "fiscal" into their request?</p> <p>6 A I think I've answered that but I'll 7 answer it again. It's because those were what the 8 original allegations were, as explained to me by 9 Judy Armstrong on that Saturday before, which she 10 said could possibly, if found true, could trigger a 11 pre-termination review.</p> <p>12 Q Okay.</p> <p>13 A So, you know, that was the consistent 14 thing.</p> <p>15 Q And -- and there was nothing in that 16 conversation about Muni Corp; you already testified 17 to that?</p> <p>18 A No.</p> <p>19 Q What -- um, let's go to the July 23rd letter which, is -- I lost my place.</p> <p>20 A I think I --</p> <p>21 Q From Paul Schmitz, sitting right next 22 to me here, Mr. Garavaglia's attorney in the Civil 23 Service Commission proceeding, to Ashley McClain. 24 MR. NORWOOD: Where is that Counsel?</p>
<p>1 know, you don't know. I'm not trying to trap you 2 or anything. I'm just asking --</p> <p>3 A Well --</p> <p>4 Q -- whether or not you know -- you 5 already had testified that you don't remember --</p> <p>6 A Yeah.</p> <p>7 Q -- seeing it or reading it, but my 8 question now is simply, do you remember or do you 9 know whether you actually received it in your 10 office?</p> <p>11 A It would not have come to my attention. This type of letter involving employees, like fitness for duties or reports on fitness for duties, or questions that had to do with employees being notified of benefits, regarding the benefits section, if it had to do with forced leave.</p> <p>12 My secretary, who's retired, Chris Dussault (phonetic), would keep a file of all the forced leave files. So that's just how the flow of paperwork, you know, anything that I had was a decision point, you know, I would get, and I typically kept a personal copy even though there was one in the computer system, and my secretary usually had one, so.</p>	<p>1 MR. BLANKE: This is, it says 2 GARAVAGLIA 215 on the bottom right. Looks like 3 this.</p> <p>4 MR. NORWOOD: Let's start with the 5 exhibit number. This Plaintiff's Exhibit O?</p> <p>6 MR. BLANKE: Yes, I'm sorry.</p> <p>7 MR. NORWOOD: And somewhere in here 8 there's a --</p> <p>9 MR. BLANKE: Well, it's -- it's 10 directly after where we left off with -- with -- 11 it's the next page -- 12 (Overalking - inaudible.)</p> <p>13 MR. BLANKE: -- after the revised 14 request letter email.</p> <p>15 A I think I have it, sir.</p> <p>16 MR. NORWOOD: Okay. July 23. All right. I'm there.</p> <p>17 MR. BLANKE: Okay.</p> <p>18 Q (BY MR. BLANKE) This letter from 19 Paul to Ashley McClain resulted in another hearing 20 being scheduled; correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And that was, hearing was 23 scheduled for August 29, 2019. Is that correct?</p> <p>24 A I'll check. That sounds correct.</p>

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<p>1 There should be correspondence from Ashley with the 2 institution of case, and yes. I've got that 3 exhibit here. So it was scheduled then for 4 August 29, 2019.</p> <p>5 Q Okay. Okay. And then if you'll turn 6 to the next page, which is an email from Darlene 7 Green to you dated August 12, 2019, saying attached 8 -- or I'm sorry, it's from Chana Morton saying "See 9 the attached letter from Darlene Green" --</p> <p>10 MS. HAMILTON: Where are you?</p> <p>11 A I'm --</p> <p>12 MR. BLANKE: It's the next page.</p> <p>13 Well, this letter from Paul Schmitz is, there's two 14 of them, and they're identical, so.</p> <p>15 MR. NORWOOD: Okay. So where are we 16 now?</p> <p>17 MR. BLANKE: It's right after that.</p> <p>18 A Is this the request for --</p> <p>19 MR. BLANKE: Just going in order 20 here.</p> <p>21 A -- extension of forced leave?</p> <p>22 MR. BLANKE: What's that?</p> <p>23 A I'm sorry, sir. Is this a -- the 24 request for extension of forced leave? Maybe I'm 25 -- I think I'm in the wrong place.</p>	<p>1 explains it as due to the -- (Quote as read): 2 in light of the ongoing investigation 3 and pending report from the State 4 Auditor's office.</p> <p>5 Q Okay. This would con -- if granted, 6 would continue the forced leave beyond the hearing 7 date; correct?</p> <p>8 A Yes, it would.</p> <p>9 Q Okay. And then if you turn the page 10 again, there is an email from you to Defendant 11 Green approving the extension for 30 days from 12 August 18th, instead of the date of her request, 13 which is August 12th.</p> <p>14 Is that because she requested the 15 effective date to begin on August 18th?</p> <p>16 A I'm wondering if it's because the 17 original --</p> <p>18 MS. HAMILTON: You can take the time 19 to review the letter.</p> <p>20 THE WITNESS: Okay, yeah.</p> <p>21 A I -- I believe because the original 22 forced letter -- or approval forced leave letter, 23 she -- she asked for 30 days from July 18, 2019. 24 And 30 days past July 18, 2019, is August 18, 2019. 25 So I was honoring the Comptroller's date of</p>
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<p>1 Q (BY MR. BLANKE) No. No.</p> <p>2 A Okay.</p> <p>3 Q Oh, is it letter for extension? Yes, 4 it is, I'm sorry. Yeah. But the -- there's a 5 letter -- before that letter of August 12t, there's 6 an email from Chana Morton saying attached is the 7 letter.</p> <p>8 MS. HAMILTON: Are you talking about 9 the email of Monday, August 12, 2019, at 4:45 PM?</p> <p>10 MR. BLANKE: Yes.</p> <p>11 A Now I've got it. Thank you.</p> <p>12 MS. HAMILTON: Okay.</p> <p>13 Q (BY MR. BLANKE) Okay. All that is, 14 is just a letter -- an email from Chana Morton 15 saying please find attached the letter from Darlene 16 Green; right?</p> <p>17 A Yes.</p> <p>18 Q Okay. And then if you turn the page, 19 there is the letter from Darlene Green to you dated 20 August 12. Correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And what is this letter?</p> <p>23 A This is a letter requesting an 24 extension of the forced leave for Mr. Garavaglia 25 from July 18 for an additional 30 days, and she</p>	<p>1 request.</p> <p>2 Q (BY MR. BLANKE) Okay. And then turn 3 the page again. An email from you to Defendant 4 Green approving the extension -- I've already 5 talked about this, so this is -- this is that 6 approval; right?</p> <p>7 A Yes.</p> <p>8 Q Okay. Very good. And then my 9 question is, is that common practice?</p> <p>10 MR. NORWOOD: Is what common 11 practice?</p> <p>12 Q (BY MR. BLANKE) To extend 30 days. 13 You already testified on direct that it happens a 14 lot.</p> <p>15 A Oh, yes.</p> <p>16 Q Yeah, okay. Did you discuss this 17 extension with Defendant Green before granting it?</p> <p>18 A No.</p> <p>19 Q Okay. With anyone from her office 20 before granting it?</p> <p>21 A No.</p> <p>22 Q Okay. Not Judy Armstrong, not Chana 23 Martin -- Morton --</p> <p>24 A No.</p> <p>25 Q I keep saying Martin. I apologize.</p>

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<p style="text-align: right;">Page 189</p> <p>1   <b>Do you know whether or not Defendant Green 2   discussed this extension with Linda Thomas?</b></p> <p>3   A I don't have any direct knowledge of 4   that. It would all be speculative.</p> <p>5   <b>Q Now, if I ask you to assume that 6   Defendant Green testified under oath that she 7   discussed this extension with Linda Thomas and with 8   you, would you still disagree with that?</b></p> <p>9   A I disa --</p> <p>10   MS. HAMILTON: I'm going to object 11   that it's an improper hypothetical, but subject to 12   that, you can answer to the --</p> <p>13   (Overtalking - inaudible.)</p> <p>14   <b>Q (BY MR. BLANKE) And she did that, by 15   the way, on page 193, lines 1 through 3, of her 16   deposition. Go ahead.</b></p> <p>17   MS. HAMILTON: You can answer, sir.</p> <p>18   A I don't remember at all discussing 19   specifics of an extension, you know. Linda, I 20   know, was originally consulted by the Comptroller 21   about the provisions of Administrative Regulation 22   117.</p> <p>23   My only recollection about the 24   extensions was communication I had with Ashley 25   about trying to get forced leave, the forced leave</p>	<p style="text-align: right;">Page 191</p> <p>1   <b>phone call?</b></p> <p>2   A No. I think what I testified to here 3   today was I discussed what the allegations were, 4   they were of a --</p> <p>5   <b>Q Right.</b></p> <p>6   A -- very serious nature, and also that 7   they -- they -- I said do you think that this is 8   something that could, if true, reasonably lead to, you know, termination, 9   dismissal, and Judy Armstrong said yes, you know, 10   that the auditors are also very concerned about 11   this.</p> <p>12   <b>Q Oh, so she did mention it?</b></p> <p>13   A Yeah, she mentioned the -- their 14   auditors.</p> <p>15   <b>Q In that -- in that Saturday 16   conversation?</b></p> <p>17   A Mm-hmm. I believe so.</p> <p>18   <b>Q Is that the first time you learned 19   about an audit?</b></p> <p>20   A Mm-hmm.</p> <p>21   <b>Q This is an internal audit?</b></p> <p>22   A Well, not the first time, no. The 23   City was going through a City-wide audit of all 24   those records. My department was the very first</p>
<p style="text-align: right;">Page 190</p> <p>1   in front of a hearing officer as soon as practical 2   because, you know, it's obviously a important issue 3   for the employee.</p> <p>4   <b>Q (BY MR. BLANKE) Is it your ordinary 5   practice to discuss extensions with the person 6   requesting them before you grant the extension?</b></p> <p>7   A Sometimes.</p> <p>8   <b>Q Sometimes yes; sometimes no?</b></p> <p>9   A Sometimes no.</p> <p>10   <b>Q Okay. What -- what would -- well, 11   okay. Now, why did you grant the extension?</b></p> <p>12   A I granted the extension because of 13   the communication I had received from the 14   Comptroller before that the state auditors, you 15   know, were involved. I knew that she had planned 16   to have them involved from my original conversation 17   that I go back to on that Saturday, and the state 18   auditors were taking longer, as they often do.</p> <p>19   <b>Q So I understand this, I just want to 20   be clear. Did you discuss the audit with -- with 21   Defendant Green -- I'm sorry, with --</b></p> <p>22   A No.</p> <p>23   <b>Q -- Judy Armstrong --</b></p> <p>24   A No.</p> <p>25   <b>Q -- on the Saturday afternoon con --</b></p>	<p style="text-align: right;">Page 192</p> <p>1   one, you know, and it would take three or four 2   months -- I think it took three or four months to 3   get through just my department.</p> <p>4   So it was winding its way through the 5   City and the auditors were routinely, you know, 6   going through each of the different departments and 7   were involved.</p> <p>8   <b>Q Who were these auditors, do you know?</b></p> <p>9   A Yeah, they were the auditors from 10   Jefferson City who worked, you know, directly for 11   Nicole Galloway.</p> <p>12   <b>Q Did you ever find out whether or not 13   this audit of the Comptroller's office was ever 14   completed?</b></p> <p>15   A No, I don't. I have not read the 16   results.</p> <p>17   <b>Q Did you ever find out any results or 18   findings of that audit from any source?</b></p> <p>19   A No.</p> <p>20   <b>Q Did you ever see any requests made to 21   the Comptroller's office from the auditors?</b></p> <p>22   A No.</p> <p>23   <b>Q Did you see -- did you ever see any 24   documents or recorded statements of anyone in the 25   Comptroller's office made to the auditors?</b></p>

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<p style="text-align: right;">Page 193</p> <p>1 A No.</p> <p>2 Q Okay. So other than just being told</p> <p>3 that they were being audited, you don't know --</p> <p>4 really know anything about it? About the audit of</p> <p>5 the Comptroller's office?</p> <p>6 A I was told from the Comptroller's</p> <p>7 office, and also from my legal counsel.</p> <p>8 Q You were told what?</p> <p>9 A That the auditor -- state auditors</p> <p>10 were involved.</p> <p>11 Q But I mean nothing more than that?</p> <p>12 A No.</p> <p>13 Q That's my question. Okay. So just</p> <p>14 to be clear, the effect of granting that extension</p> <p>15 was that the hearing scheduled for August 29, the</p> <p>16 Civil Service Commission hearing, on the second</p> <p>17 forced leave request would occur prior to the end</p> <p>18 of the forced leave; correct?</p> <p>19 (Overtalking - inaudible.)</p> <p>20 Q (BY MR. BLANKE) Would occur prior to</p> <p>21 the end of the -- of the second forced leave. You</p> <p>22 gave a 30-day extension on August 18 --</p> <p>23 MR. NORWOOD: Oh, well, let me -- let</p> <p>24 me object because it assumes that there was a</p> <p>25 30-day extension, but subject to that.</p>	<p style="text-align: right;">Page 195</p> <p>1 Q I'm not -- I'm not saying there's</p> <p>2 anything improper about it. I'm just asking</p> <p>3 whether or not that's true?</p> <p>4 A I'm just -- and I'm explaining to</p> <p>5 you, Counselor, that they're two separate things.</p> <p>6 Q Okay. So the answer is yes?</p> <p>7 A Could happen at any time.</p> <p>8 Q Right. So the answer is yes. Right?</p> <p>9 It would --</p> <p>10 MR. NORWOOD: Well, and -- and let me</p> <p>11 just highlight and get your concession --</p> <p>12 MR. BLANKE: I think anybody could</p> <p>13 come --</p> <p>14 MR. NORWOOD: -- that you're not</p> <p>15 suggesting that there's anything improper about it.</p> <p>16 MR. BLANKE: That's right.</p> <p>17 MR. NORWOOD: I mean, I just want to</p> <p>18 make sure she got that.</p> <p>19 MR. BLANKE: You're right, yeah.</p> <p>20 MR. NORWOOD: Is that right, Counsel?</p> <p>21 MR. BLANKE: Because as -- that's</p> <p>22 correct, because as he --</p> <p>23 MR. NORWOOD: Okay.</p> <p>24 MR. BLANKE: -- just testified, it</p> <p>25 happens all the time.</p>
<p style="text-align: right;">Page 194</p> <p>1 MR. BLANKE: What do you mean? He</p> <p>2 testified that he granted the 30-day extension.</p> <p>3 MR. NORWOOD: He testified that he</p> <p>4 granted the 30-day extension. He didn't testify</p> <p>5 that the Commission granted the 30-day extension.</p> <p>6 MR. BLANKE: I understand that but</p> <p>7 that's not my question.</p> <p>8 Q (BY MR. BLANKE) My question is just</p> <p>9 -- is just whether or not the effect of granting</p> <p>10 the 30-day extension meant that that 30-day</p> <p>11 extension wouldn't expire until after the hearing</p> <p>12 date of August 23rd. Right?</p> <p>13 MR. NORWOOD: Let me object. After</p> <p>14 the scheduled hearing date?</p> <p>15 MR. BLANKE: The scheduled hearing</p> <p>16 date. Right.</p> <p>17 MR. NORWOOD: Okay.</p> <p>18 A They're two independent types of</p> <p>19 processes. You know, the forced leave is granted</p> <p>20 for the period for which it's granted.</p> <p>21 Q (BY MR. BLANKE) Right.</p> <p>22 A You know, we then schedule, you know,</p> <p>23 at a time when we can get a hearing officer, you</p> <p>24 know, an evidentiary hearing, with a low threshold,</p> <p>25 for the meeting --</p>	<p style="text-align: right;">Page 196</p> <p>1 MR. NORWOOD: All right. There we</p> <p>2 go. All right.</p> <p>3 MR. BLANKE: Okay. So, you know, you</p> <p>4 keep reading these motives into my questions and</p> <p>5 it's just -- I'm just asking questions.</p> <p>6 Q (BY MR. BLANKE) Okay. Look at the</p> <p>7 next -- go -- go a couple of pages in to where it</p> <p>8 says GARAVAGLIA 374 on the bottom right. That's</p> <p>9 the Bates stamp number. So it's about three or</p> <p>10 four pages and it's called Motion for Continuance.</p> <p>11 A I have it.</p> <p>12 Q Okay. And that Motion for</p> <p>13 Continuance on the second page is signed by Nancy</p> <p>14 Kistler and dated August 16; is that correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. Did you know about this when</p> <p>17 it was done? When the motion was filed.</p> <p>18 A Yes.</p> <p>19 Q Did you know it was going to be filed</p> <p>20 before it was filed?</p> <p>21 A Yes.</p> <p>22 Q How?</p> <p>23 A Because I was working with Ashley</p> <p>24 McClain and coming up with a schedule for the</p> <p>25 forced leave hearing and Ashley explained to me</p>

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<p style="text-align: right;">Page 197</p> <p>1 that, you know -- and she works with the appointed 2 authorities and the legal counsel to make sure that 3 there's suitable dates. 4 So I heard that this was -- you know, 5 they were in the works in terms of trying to come 6 up with an amenable date. 7       <b>Q Well, we -- you already agreed with</b> 8       <b>me that the -- the hearing that was scheduled for</b> 9       <b>August 23rd was scheduled on August the 11th;</b> 10      <b>correct?</b> 11      A Pardon me? 12      <b>Q The hearing that was scheduled to</b> 13      <b>take place on August 23rd was actually scheduled on</b> 14      <b>August the 11th; is --</b> 15      MR. SCHMITZ: You mean 29th? 16      <b>Q (BY MR. BLANKE) I'm sorry, I meant</b> 17      <b>to say 29th.</b> 18      A Oh, okay. 19      <b>Q It was meant to be -- I'm sorry, I</b> 20      <b>apologize.</b> 21      MR. NORWOOD: Well, why don't we -- 22      <b>Q (BY MR. BLANKE) Let's back up.</b> 23      <b>(Overtalking - inaudible.)</b> 24      MR. BLANKE: I withdraw the whole 25      thing.</p>	<p style="text-align: right;">Page 199</p> <p>1 communication at this point in the process was 2 fairly limited to working with Ashley and making 3 sure that the process is moving forward and the -- 4 and what I remember telling her is, you know, try 5 and get a date as -- as soon as possible. We 6 weren't quite sure how this was all going to turn 7 out. 8       <b>Q (BY MR. BLANKE) When was the hearing</b> 9       <b>that was scheduled for August 29th scheduled? When</b> 10      <b>was that set? I don't mean when the hearing date</b> 11      <b>was set. It was set on August the 29th. But when</b> 12      <b>was that date selected?</b> 13      MS. HAMILTON: Are you referring to a 14      document in this package of miscellaneous things 15      here? 16      THE WITNESS: Yeah, I don't -- 17      MR. BLANKE: Yes, but -- 18      MS. HAMILTON: Is there a page that 19      you could point us to with this? 20      MR. BLANKE: We've already -- this 21      testimony has already occurred. I don't know why 22      this is so hard. 23      MR. NORWOOD: We're trying to follow 24      the ball on this. 25      MS. HAMILTON: This packet and these</p>
<p style="text-align: right;">Page 198</p> <p>1       (Overtalking - inaudible.) 2      MR. BLANKE: I'm withdrawing the 3      question. 4      A Sorry, it's getting late in the day. 5      Pardon me. 6      <b>Q (BY MR. BLANKE) Me too, and I think,</b> 7      <b>you know, I -- that's what's going on here. It's</b> 8      <b>not that I'm trying to trap you. It's just because</b> 9      <b>I confuse myself sometimes.</b> 10     <b>But at any rate, the -- the hearing</b> 11     <b>that was scheduled before the Civil Service</b> 12     <b>Commission on August 29th was set -- was set long</b> 13     <b>before this motion for continuance was filed.</b> 14     A Correct. 15     <b>Q Okay. So my question is, and you may</b> 16     <b>have answered it already correctly, that you knew</b> 17     <b>about the Motion for Continuance prior to the time</b> 18     <b>it was filed. Correct?</b> 19     MR. NORWOOD: Well, I think -- 20     objection, I think that mischaracterizes testimony. 21     MR. BLANKE: I don't think so but 22     maybe you're right. I don't know. That's why I'm 23     asking again. 24     A I guess I don't know. I'm not an 25     attorney, if you call this hearsay, but my</p>	<p style="text-align: right;">Page 200</p> <p>1      questions. 2      MR. BLANKE: No, that's why I'm 3      asking the question. 4      <b>Q (BY MR. BLANKE) My question is, once</b> 5      <b>again, for the third time, when was the August 29th</b> 6      <b>hearing date selected?</b> 7      A I would have to have something in 8      front of me because, again, that's not -- that was 9      not my job. I did not set the hearing dates. I 10     asked my administrative assistant to the Civil 11     Service Commission who has numerous hearing dates, 12     you know, set with all six of our hearing -- or 13     what were six of our hearing officers. 14     So in this case in particular, you 15     know, there -- there was a lot of different things 16     in play so I was not sure, in terms of when it was 17     set and it's not something that normally would be 18     brought to my attention anyway unless I were called 19     as a -- a witness or somehow personally involved. 20     <b>Q Okay. Then if you'll turn the page</b> 21     <b>about two or three pages, you'll see an Order from</b> 22     <b>Thomas Frawley. There are actually two of them.</b> 23     <b>They're both dated on August the 22nd, but I'm</b> 24     <b>talking about the shorter Order which is the second</b> 25     <b>one that appears here that reads, (Quote as read):</b></p>

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<p>1       <b>Under Administrative Regulation</b>  2       <b>Number 117, an employee must be –</b>  3       <b>placed on forced leave may elect to</b>  4       <b>-- I'm sorry.</b>  5       <b>Under Administrative Regulation</b>  6       <b>Number 117, an employee placed on</b>  7       <b>forced leave may elect to be placed</b>  8       <b>on vacation leave, but if the forced</b>  9       <b>leave is disapproved, the employer</b>  10      <b>(sic) will not be restored his</b>  11      <b>vacation leave.</b></p> <p>12      A   Right.</p> <p>13      Q   <b>(Quote as read):</b>  14       <b>Therefore, the Appointing Authority's</b>  15       <b>Motion for Continuance shall be and</b>  16       <b>hereby is denied.</b>  17       <b>And that's dated August 22nd.</b></p> <p>18      <b>Correct?</b></p> <p>19      A   Yes.</p> <p>20      Q   <b>Okay. So as a result of that Order</b>  21       <b>from the hearing officer, the hearing for</b>  22       <b>August 29th was still going to take place?</b></p> <p>23      A   Based on this, yes.</p> <p>24      Q   <b>Yes. Okay. Now, if you'll turn the</b>  25      <b>page again, there are -- there is a -- there is</b></p>	<p>1       particular about Mr. Garavaglia's case, any  2       questions that, if I did answer anything, would  3       have just been, you know, procedural in nature and  4       like how do you do this.</p> <p>5       I mean, I think that was sort of like  6       the gist of -- of, according to my conversation  7       with -- with Linda, which I followed up after I got  8       the memo and thanked her, I said, you know, what --  9       what's going on with this, you know, what did you  10      say to the Comptroller, what's going on?</p> <p>11      And she goes, I actually received a  12      phone call from her. She wanted to know about the  13      process for forced leave. Which isn't uncommon.  14      We get a lot of questions about forced leave and  15      how it works, and so it would have just been in  16      general terms about, you know, extension of forced  17      leaves and sometimes they -- the appointing  18      authorities ignore me anyway, so.</p> <p>19      <b>Q   What do you mean by that? How do</b>  20      <b>they -- how do they ignore you anyway?</b></p> <p>21      A   Well, be prior to the change in  22      October of 2019 -- actually September of 2019, that  23      squarely placed all police division employees under  24      civil service in the department of personnel,  25      administrative regulations under the collective</p>
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<p>1       <b>several different memorandums that follow.</b>  2       <b>The first in order here is a</b>  3       <b>memorandum to Paul Schmitz from Darlene Green dated</b>  4       <b>August 27th. That's a one-page memorandum. Do you</b>  5       <b>see that?</b></p> <p>6      A   Yes.</p> <p>7      Q   <b>Okay. And then the second in order</b>  8       <b>here is an earlier memorandum from the previous day</b>  9       <b>of August 26 to Judy -- from Judy Armstrong to</b>  10      <b>Darlene Green, and that's two pages long; correct?</b></p> <p>11      A   I see that, yes.</p> <p>12      Q   <b>And then the third is a document</b>  13       <b>dated also on August the 26th from Comptroller</b>  14       <b>Darlene Green but not addressed to anyone in</b>  15       <b>particular. Correct?</b></p> <p>16      A   Yeah. I see that.</p> <p>17      Q   <b>Okay. Did you ever see these?</b></p> <p>18      A   No.</p> <p>19      Q   <b>This the first time you saw them?</b></p> <p>20      A   Yes.</p> <p>21      Q   <b>Okay. Did you have any discussions</b>  22       <b>with anyone in the Comptroller's office about the</b>  23       <b>request to withdraw the second forced leave before</b>  24       <b>that request was made in writing?</b></p> <p>25      A   I don't remember anything in</p>	<p>1       bargaining agreement and police manual, it was not  2       necessary for the Police Commissioner to ask  3       permission to place a commissioned officer on  4       forced leave. He had the authority to do it.</p> <p>5       And I told them on numerous  6       occasions, you don't have to send me this and every  7       month I would get a request for an extension from  8       people. So it's just kind of typical that -- not  9       typical but sometimes in -- with forced leave,  10      people were very careful and they would ask either  11      myself or my secretary, Chris, or Linda, or  12      personnel services, that they were doing forced  13      leave correctly.</p> <p>14      <b>Q   Okay. Following these three</b>  15      <b>memoranda that you did not see, okay, is four</b>  16      <b>subpoenas.</b></p> <p>17      A   Mm-hmm.</p> <p>18      Q   <b>Subpoenas Duces Tecum they're called.</b>  19      <b>One's to the Comptroller's Office, another is to</b>  20      <b>the Department of Personnel, and another is to you</b>  21      <b>personally, and another is to Defendant Green</b>  22      <b>personally.</b></p> <p>23      <b>How do these get issued? Well, first</b>  24      <b>of all, as the secretary to the Commission, do you</b>  25      <b>know how they get issued?</b></p>

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<p>1       A Yeah, I have subpoena power, the      2 Commission does not. So, you know, I would have to      3 authorize by my signature any, um, you know,      4 Subpoena Duces Tecum or my designee in my absence.      5 I may have erred because I don't know that with      6 forced leave hearings, which have a different      7 standard of -- of proof that Subpoena Duces Tecums      8 are actually issued.</p> <p>9       But under normal circumstances, you      10 know, I review the subpoena, make sure that      11 they're, you know, properly worded and signed, and      12 every once in a while we'll run into an issue where      13 I -- you know, if it's outside the City of      14 St. Louis, we might have to go to Circuit Court to      15 get them enforced.</p> <p>16     <b>Q So were you aware of any motions made      17 by Nancy Kistler to quash any of these subpoenas?</b></p> <p>18     A I may have read it. I don't recall      19 all of it.</p> <p>20     <b>Q Okay. You -- you signed them,      21 though; right?</b></p> <p>22     A Yes. I believe I did.</p> <p>23     <b>Q So that's your approval that the      24 subpoena is issued; correct?</b></p> <p>25     A Yes. Which would, if she felt that</p>	<p>1       <b>Q Yeah, so he made an order on August      2 22nd, in addition to his motion -- in addition to      3 denying the continuance, he also ruled on the      4 Motion to Quash the Subpoenas?</b></p> <p>5       A That's correct.</p> <p>6       <b>Q And he partially granted them and      7 partially denied the motions; right?</b></p> <p>8       A Yes.</p> <p>9       <b>Q Okay. So some were proper; some were      10 not. Right?</b></p> <p>11     A Correct.</p> <p>12     <b>Q Okay. So, now, turn the page again      13 after this, after the subpoenas; okay? And there      14 is a letter from Darlene Green to you dated      15 August 28, 2019. August 28th is the day, the day,      16 prior to the scheduled evidentiary hearing before      17 the Service -- Civil Service Commission on the      18 second forced leave. Correct?</b></p> <p>19     MS. HAMILTON: Have you got it?</p> <p>20     A I don't think I -- I've got the      21 pre-termination hearing.</p> <p>22     <b>Q (BY MR. BLANKE) You've gone too far.</b></p> <p>23     MS. HAMILTON: August 28.</p> <p>24     A I'm up to August 28, isn't it?</p> <p>25     <b>Q (BY MR. BLANKE) Yep. Back up. Back</b></p>
<p style="text-align: center;">Page 206</p> <p>1       they were improper, overly broad, it's burdensome      2 you know, she then has the responsibility, you      3 know, to file a Motion to Quash.</p> <p>4       And outside of granting an initial      5 continuance on a hearing, all other motions for an      6 evidentiary hearing need to be ruled on by the      7 hearing officer who is an attorney, so.</p> <p>8       <b>Q And that happened in this case,      9 didn't it?</b></p> <p>10     A Yes, it did.</p> <p>11     <b>Q Well, let me just go back and --</b></p> <p>12     A And Judge Frawley --</p> <p>13     <b>Q And just before that Motion for      14 Continuance that you were looking at earlier is a      15 Motion to Quash Subpoenas?</b></p> <p>16     A Yeah.</p> <p>17     <b>Q Made by Nancy Kistler. And then just      18 to refresh your recollection, I'm just --</b></p> <p>19     A Sorry.</p> <p>20     <b>Q -- asking you to glance over that.</b></p> <p>21     A Yeah, this is with Judge Frawley      22 getting back at me and telling me I made an error      23 probably.</p> <p>24     <b>Q Well, partially; right?</b></p> <p>25     A Yeah.</p>	<p style="text-align: center;">Page 208</p> <p>1       <b>up.</b></p> <p>2       A Back up? Okay.</p> <p>3       <b>Q Yeah.</b></p> <p>4       MS. HAMILTON: After the subpoenas.</p> <p>5       <b>Q (BY MR. BLANKE) Looks like this.</b></p> <p>6       A Yeah, I'm sorry.</p> <p>7       MS. HAMILTON: I'm holding it up to      8 him.</p> <p>9       <b>Q (BY MR. BLANKE) That's okay.</b></p> <p>10     A Right in between the two. I see it      11 now. I'm sorry. Thank you.</p> <p>12     <b>Q My first question is an easy one.      13 That that date of August 28, 2019, is the actual --      14 is the day before the scheduled Civil Service      15 Commission hearing of August 29th; right?</b></p> <p>16     A Mm-hmm. Yes, sir.</p> <p>17     <b>Q Okay. And this letter purports to      18 withdraw her request for forced leave; is that      19 correct?</b></p> <p>20     A Yes.</p> <p>21     <b>Q And that would be the second time      22 that she withdrew it?</b></p> <p>23     A Yes.</p> <p>24     <b>Q Now, in this letter to you from      25 Defendant Green, she states that she'd like to</b></p>

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<p style="text-align: center;">Page 209</p> <p>1 withdraw the request that she made on July 18, 2 2019. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q But she didn't make the request on 5 July 18, 2000 -- on August 18, 2019. She made it 6 on August 12, 2019. Correct?</p> <p>7 A Yes. I think --</p> <p>8 MS. HAMILTON: I'm -- wait a minute.</p> <p>9 A I think that's -- we've already 10 talked about why the extension went to --</p> <p>11 Q (BY MR. BLANKE) Yeah.</p> <p>12 A -- August 18 --</p> <p>13 MS. HAMILTON: I just think you 14 said --</p> <p>15 A -- instead of August 12th.</p> <p>16 MS. HAMILTON: -- the wrong dates.</p> <p>17 THE WITNESS: Yeah, I know it --</p> <p>18 MS. HAMILTON: I'm going to say that 19 again. I think you got the wrong dates.</p> <p>20 MR. NORWOOD: You said July 12th.</p> <p>21 MR. BLANKE: I did? Okay. I'll say 22 it again.</p> <p>23 A August 12th, 2019.</p> <p>24 Q (BY MR. BLANKE) So -- so -- yeah.</p> <p>25 MS. HAMILTON: Yeah, let's just do</p>	<p style="text-align: center;">Page 211</p> <p>1 Q Now, this letter from Ashley goes to 2 the two attorneys. My question now is, do you have 3 any reason to believe that Darlene Green knew that 4 this was the case before she made her motion to 5 withdraw her second forced leave request?</p> <p>6 MR. NORWOOD: Objection. Vague and 7 ambiguous. Knew what -- what was the case?</p> <p>8 Q (BY MR. BLANKE) Do you have any 9 reason to believe that she would have known that by 10 withdrawing her second request for forced leave, 11 that this hearing would have been -- would not have 12 taken place --</p> <p>13 MS. HAMILTON: And I would --</p> <p>14 Q (BY MR. BLANKE) -- as a result of 15 that second leave being withdrawn?</p> <p>16 MS. HAMILTON: And I would just 17 object to the extent that you might be getting into 18 attorney-client privilege information and instruct 19 the witness, again --</p> <p>20 MR. BLANKE: What do you mean?</p> <p>21 MS. HAMILTON: -- not to get into any 22 privileged conversations.</p> <p>23 Q (BY MR. BLANKE) Okay. Other than 24 that.</p> <p>25 A Yeah, I really don't have a -- a</p>
<p style="text-align: center;">Page 210</p> <p>1 that one again.</p> <p>2 MR. BLANKE: Oh, I see what you mean.</p> <p>3 Yeah, okay.</p> <p>4 Q (BY MR. BLANKE) Yeah, so she refers 5 to her letter dated July 18th and it was actually 6 July 12th. Is that correct? But it was to be 7 effective July 18th. We've talked about that.</p> <p>8 A Yes.</p> <p>9 Q Right. But her letter was actually 10 July 12th?</p> <p>11 A Yeah, I -- I agree with you on that.</p> <p>12 Q Okay. Okay. Now, turn the page yet 13 again, and there's a letter from Ashley McClain to 14 the two attorneys, Nancy Kistler and Paul Schmitz. 15 And what -- what is -- what is Ashley purporting to 16 do here? What is she advising here?</p> <p>17 A She's advising that due to the fact 18 that the Comptroller has requested to withdraw the 19 forced leave, that the -- there's no reason for the 20 hearing. I mean, the hearing would -- would have 21 been null and void because Mr. Garavaglia would 22 have been made whole by virtue of the fact that the 23 forced request dating all the way back to that date 24 of July 12, I guess it was or whatever, whenever -- 25 he -- he would be made whole as of that date.</p>	<p style="text-align: center;">Page 212</p> <p>1 response to that. I mean, I would decline to 2 respond because it was based on, um -- any 3 knowledge I had would be based on my communications 4 with -- with Deputy City Counselor, Nancy Kistler.</p> <p>5 Q I think you maybe misunderstand that 6 question. I'm not asking you anything about the 7 City Counselor's office at all. I'm asking you 8 whether or not you have any reason to believe that 9 the Comptroller would have known that the effect of 10 withdrawing the forced leave would have resulted in 11 the cancellation of the hearing.</p> <p>12 MS. HAMILTON: And I think his answer 13 is that you're asking him to reveal substance of 14 conversations that he had with Nancy Kistler. Did 15 you hear him?</p> <p>16 MR. NORWOOD: She can read it back.</p> <p>17 Q (BY MR. BLANKE) Why -- why would 18 Nancy -- that you had with Nancy Kistler?</p> <p>19 A Yes.</p> <p>20 Q So you didn't know that yourself, 21 that it would result in the -- in the cancellation 22 of the hearing?</p> <p>23 MS. HAMILTON: That wasn't the 24 question.</p> <p>25 MR. NORWOOD: That wasn't --</p>

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<p style="text-align: center;">Page 213</p> <p>1 A You weren't asking me. 2 MS. HAMILTON: That wasn't your 3 question. 4 Q (BY MR. BLANKE) Why would you have 5 learned -- 6 MS. HAMILTON: Your question was 7 about -- 8 MR. BLANKE: Oh, I see. I see. 9 A The rest of it, pardon me, is 10 speculative. 11 (Overtalking - inaudible.) 12 MR. BLANKE: So -- so, you know, 13 okay, you know, this is ridiculous. This 14 attorney-client privilege has no application to 15 this question at all. 16 Q (BY MR. BLANKE) If -- if you -- so 17 -- so it's your testimony that -- that you're -- 18 you don't want to answer this question because of 19 what Nancy Kistler may have told Darlene Green; is 20 that what -- 21 MS. HAMILTON: And you can -- 22 Q (BY MR. BLANKE) -- you're saying? 23 MS. HAMILTON: And you can -- 24 Q (BY MR. BLANKE) Is -- is that right? 25 MS. HAMILTON: You can read back his</p>	<p style="text-align: center;">Page 215</p> <p>1 THE REPORTER: I have talk from 2 Ms. Hamilton, Mr. Norwood, that -- but I don't have 3 an answer. 4 MS. HAMILTON: Maybe he asked the 5 same question twice, but I heard him answer that 6 question. So. 7 Q (BY MR. BLANKE) So can you answer -- 8 MR. NORWOOD: Well, why don't you 9 answer -- ask it again, so we can object again, so 10 we can be confused again, by your question. But go 11 ahead. 12 MR. BLANKE: You can read back the 13 question another time. 14 MS. HAMILTON: Oh, my God. 15 MR. BLANKE: I don't want to rephrase 16 it. We'll be talking about three different things. 17 THE REPORTER: "I'm asking you 18 whether or not you have any reason to believe that 19 the Comptroller would have known that the effect of 20 withdrawing the forced leave would have resulted in 21 the cancellation of the hearing." 22 MS. HAMILTON: And my objection is 23 that to the extent that the conversation anything 24 that is attorney-client privileged, I would 25 instruct the witness not to answer. I would also</p>
<p style="text-align: center;">Page 214</p> <p>1 answer to the prior question. Could you read back 2 his answer to the prior question, please? 3 THE REPORTER: Which question? 4 MS. HAMILTON: The prior -- the one 5 immediately prior to this. 6 THE REPORTER: "I'm asking you 7 whether or not you have any reason to believe that 8 the Comptroller would have known that the effect of 9 withdrawing the forced leave would have resulted in 10 the cancellation of the hearing." 11 MS. HAMILTON: I'm sorry, the answer 12 to the question, sorry. 13 THE REPORTER: There wasn't an 14 answer. That's when you all started -- 15 MR. NORWOOD: And then there was an 16 answer that following. 17 THE WITNESS: May I answer this? 18 MR. NORWOOD: Well, no, no, no -- 19 (Overtalking - inaudible.) 20 THE WITNESS: -- ordering me not to, 21 I'm confused. 22 MR. BLANKE: That's the only question 23 I asked. 24 MR. NORWOOD: Hold on, hold on, 25 let's --</p>	<p style="text-align: center;">Page 216</p> <p>1 object that it calls for speculation. Subject to 2 that, you can answer. 3 MR. NORWOOD: Unless it would breach 4 the attorney-client privilege. 5 A I think it would breach it because it 6 was a matter that I discussed with the City 7 Counselor, and I routinely discussed -- 8 MS. HAMILTON: And that's -- 9 Q (BY MR. BLANKE) Let me ask this 10 question. Did you know before the -- as -- as the 11 secretary to the Commission and the director of the 12 Department of Personnel, when a forced leave 13 request is withdrawn and a Civil Service Commission 14 has already been scheduled for that forced leave, 15 does that have the effect of canceling the hearing? 16 A Yes, it does. 17 Q And how did you know that? 18 A Because that's policy -- I mean 19 that's just procedure. I mean, there's no -- 20 Q Where does it come from, that 21 procedure? 22 A The evidentiary hearing process 23 outlines, you know, what would happen and there's 24 no matter at -- at contest anymore. There -- it's 25 gone. It's null and void.</p>

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<p style="text-align: right;">Page 217</p> <p>1       Q   And that should be apparent to 2   anybody, wouldn't you agree? 3       A   I would agree to that. 4       Q   So would you agree that Darlene 5   Green, being anybody, would have known that, even 6   aside from whatever she may have learned from the 7   Counselor's office? 8                     (Overtalking - inaudible.) 9       MS. HAMILTON: I object that it calls 10   for speculation. 11      THE WITNESS: Yeah. 12      MR. NORWOOD: Yes. 13      MS. HAMILTON: Subject to that, you 14   can answer. 15      A   I would say it's speculative. I have 16   seen attorneys who have misspelled and -- and 17   misnumbered things. I have seen plenty of 18   engineers with Master's degrees who can't 19   understand simple provisions. So it would be 20   speculative. 21      I mean, I've already testified with 22   all due deference to Comptroller Green's financial 23   acumen. I've already testified she asked about 24   routine procedures of forced leave from Ms. Thomas. 25   This was a complex one, so that's my answer.</p>	<p style="text-align: right;">Page 219</p> <p>1       A   Absolutely. 2       Q   -- and it gets done. When she says 3   she wants to withdraw it, it's withdrawn, 4   basically? 5       A   Yes. 6       Q   You're just acknowledging the fact. 7       A   Yes. 8       Q   Okay. And once again, and I 9   apologize if I -- if this was asked already. I 10   just don't remember the answer if you did. Did you 11   have any discussions with Defendant Green or anyone 12   in her office about the request to withdraw this 13   forced -- the second forced leave? 14      MR. NORWOOD: Objection -- 15      Q   (BY MR. BLANKE) Any oral 16   conversations? 17      MR. NORWOOD: Objection, asked and 18   answered. 19      Q   (BY MR. BLANKE) Subject to that. 20      A   I -- my recollection is that the two 21   people with whom I had conversations with about the 22   withdrawal of the forced leave were Nancy Kistler 23   and Ashley McClain. 24      Q   That's it? 25      A   That's, yeah, to the best of my</p>
<p style="text-align: right;">Page 218</p> <p>1       Q   (BY MR. BLANKE) Let me ask you this. 2   Do you have -- I see that you approved both of the 3   withdrawals of the forced leave that she asked for. 4   Correct? 5       MS. HAMILTON: I would object that 6   that mischaracterizes -- 7       Q   (BY MR. BLANKE) That's not correct? 8       MS. HAMILTON: -- the witness's 9   testimony. 10      A   It's not correct because it's a -- 11   it's not even like a writ of mandamus kind of 12   issue. It's -- it's just a formal recognition is 13   all. 14      Q   That was my next question. 15      A   Yeah. 16      Q   You don't have to approve that? 17   That's something -- 18      A   No, I don't have to. 19      Q   Right. 20      A   She could rescind it at any time. 21      Q   Right. 22      A   That's -- that's not under my 23   control. 24      Q   So that's something that she did on 25   her own and --</p>	<p style="text-align: right;">Page 220</p> <p>1       recollement. 2       Q   Okay. Do you know whether Linda 3   Thomas or Ashley McClain had any conversations with 4   anyone in the Comptroller's office about their 5   withdrawal of the second forced leave? 6       A   I don't know, sir. 7       Q   Okay. Let's -- let's go to the black 8   book. Which has in it the pre-termination letter 9   which is -- 10      MR. NORWOOD: Tab 10. 11      MR. BLANKE: Thank you. Tab 10. 12                     (Overtalking - inaudible.) 13      Q   (BY MR. BLANKE) This letter is the 14   pre-termination letter -- 15      MR. NORWOOD: Well, just for -- for 16   the record, we're talking about Frank -- 17      Q   (BY MR. BLANKE) Exhibit 10. 18      MR. NORWOOD: -- Depo Exhibit 10. 19      MR. BLANKE: That's correct. 20      A   Thank you. 21      Q   (BY MR. BLANKE) This letter, on the 22   third page, which is Bates numbered STL001310, 23   shows on the bottom that a copy was sent to you. 24   Correct? 25      A   Yes.</p>

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<p>1       Q   Okay. And did you receive it and 2    <b>read it?</b></p> <p>3       A   Yes.</p> <p>4       Q   Okay. Do you remember when, 5    <b>approximately?</b></p> <p>6       A   I remember it was after it was 7    already delivered to -- or sent, I should say, to 8    -- and dated to Mr. Garavaglia. I had no input or 9    knowledge of any of the specific contents of it 10   prior to that.</p> <p>11      Q   <b>Did you discuss all of these charges</b> 12    <b>that are contained in this letter with Defendant</b> 13   <b>Green or anyone in her office?</b></p> <p>14      A   No.</p> <p>15      Q   <b>Do you know whether Ashley – excuse</b> 16   <b>me. Do you know whether Linda Thomas ever</b> 17   <b>discussed these charges that are contained in the</b> 18   <b>pre-termination letter with – with anyone in the</b> 19   <b>Comptroller's office?</b></p> <p>20      A   Ms. Thomas, um, explained to me, when 21   she heard that I had a deposition this week, that 22   she only discussed with Comptroller Green the 23   procedures as outlined in Administrative Regulation 24   117 and none of the specifics.</p> <p>25      Q   <b>How about anyone else in your office?</b></p>	<p>1       scheduling it, et cetera. 2           And so, you know, that kind of 3   cross-communication, other than just discussion of 4   policies and procedures, would -- would be outside 5   of something we would get involved with.</p> <p>6       Q   <b>What – what about Linda Thomas?</b> 7   <b>Would it have been improper for her to discuss</b> 8   <b>these allegations?</b></p> <p>9       MR. NORWOOD: Well, let me -- let me 10   object on the term "improper" because it's vague 11   and ambiguous and could call for a legal 12   conclusion.</p> <p>13      Q   <b>(BY MR. BLANKE) Well, improper for</b> 14   <b>any reason because I – I'm just picking that up</b> 15   <b>from what you said in your answer that you thought</b> 16   <b>that it would have -- maybe you were just referring</b> 17   <b>to Ashley McClain.</b></p> <p>18      A   I was referring to Ashley McClain and 19   myself as secretary, I wear different hats. Admin</p> <p>20      Q   <b>Right.</b></p> <p>21      A   So while I might review a 22   pre-termination packet to make sure that it 23   complies with Admin Reg 117 fully and the tenets of 24   due process, you know, I'm not looking to see if 25   they've proved up the charges or et cetera. That's</p>
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<p>1       <b>Did anybody else in your office, to the best of</b> 2   <b>your knowledge, discuss the contents of the</b> 3   <b>allegation – the charges against Mr. Garavaglia</b> 4   <b>that are contained in Exhibit Number 10?</b></p> <p>5       A   None to my knowledge, and I have 6   every confidence and belief that my former 7   administrative assistant, Ashley McClain, would not 8   have discussed them. She had impeccable sense of 9   integrity and propriety and a long history of legal 10   background, so I -- I -- I have no reason to 11   believe she would have discussed any specifics 12   about this. And --</p> <p>13      Q   <b>Why – why – do you – that sort of</b> 14   <b>suggests to me that you think it would have been</b> 15   <b>improper for her to do that. Is – is that what</b> 16   <b>you're saying?</b></p> <p>17      A   Be -- I would say that because we 18   don't get into -- it's not our job to be the 19   adjudicator --</p> <p>20      Q   <b>Okay.</b></p> <p>21      A   -- you know, of an appeal to the 22   Commission. She's there to assist the -- the 23   judicial officer -- I'm sorry, the quasi-judicial 24   officer, the hearing officer, in terms of trans -- 25   you know, taking the tape, transcribing it,</p>	<p>1       my role as director of personnel. 2           As secretary, I'm just making sure 3   that other kinds of things, you know, under the 4   Commissions purview are proper, et cetera, and 5   that's Ashley's role.</p> <p>6       Linda Thomas, you know, would have 7   been, you know, capable of speaking to, you know, 8   any employee about -- or I'm sorry, any appointing 9   authority about, you know, disciplinary issues, but 10   I think I've already stated that, based on a recent 11   conversation I had with Miss Thomas, she explained 12   to me that the only conversation she had in this 13   whole business was answering the Comptroller's 14   initial questions about Administrative Regulation 15   117, and she really had no interest in getting 16   involved with it, quite frankly.</p> <p>17      Q   <b>Okay. How does that scheduled</b> 18   <b>hearing of 29th, how does it actually get canceled?</b> 19   <b>Is it just – does it automatically get canceled?</b> 20   <b>Or does the Commission cancel it? Or does Ashley</b> 21   <b>cancel it?</b></p> <p>22      A   Not the Commission. Ashley would 23   cancel it.</p> <p>24      Q   <b>She cancels it herself?</b></p> <p>25      A   Yes. And she would do that, sir, in</p>

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<p>1 conjunction with the -- the hearing officer. She      2 would notify the hearing officer, first, of course,      3 as a courtesy, and then immediately the parties so      4 we don't have people showing up.</p> <p>5 Q Did you ever have any discussions      6 about approving Defendant Green's requests for      7 forced leave, or her request to withdraw the forced      8 leaves, with anyone outside of the Comptroller's      9 office? Or the Department of Personnel? Anyone      10 outside of these two departments. Your department      11 or the Comptroller's office. Anyone else?</p> <p>12 A Yes. Nancy Kistler.</p> <p>13 Q Anyone else?</p> <p>14 A No.</p> <p>15 Q Did you ever receive any pressure of      16 any kind from anybody, in or out of the City, to      17 approve the forced leaves?</p> <p>18 A No.</p> <p>19 MR. BLANKE: Okay. I need to take a      20 five-minute break. We might be done, but I just      21 want to take a five -- a -- just a five-minute      22 break.</p> <p>23 MR. NORWOOD: Fair enough.</p> <p>24 THE VIDEOGRAPHER: Time is 3:38 PM,      25 we are off the record.</p>	<p>1 wasn't sure if it was completed and they just      2 hadn't issued it yet, or if, you know, they were      3 still looking into it. I mean, this has been      4 months ago, so.</p> <p>5 Q And -- and you wouldn't have any      6 personal knowledge as to whether -- which of those      7 two things it might be?</p> <p>8 A No, I would not.</p> <p>9 Q Do you remember anything else?</p> <p>10 Anything more specific. About the audit.</p> <p>11 A No, not about the audit at all. I      12 remember mine. I was really happy with that, but      13 other than that, no.</p> <p>14 Q Well, do you have anything -- was      15 there anything else specifically that you recall      16 that was discussed besides what you just said?</p> <p>17 A No, I think that just the other thing      18 I, and just in an abundance of transparency, I      19 never had a conversation about the -- the case or      20 the allegations or anything, but the only other      21 person I talked to was Chana when she would say the      22 Comptroller's on the phone, you know.</p> <p>23 Q Well --</p> <p>24 A That -- that's it.</p> <p>25 Q Sticking with this conversation with</p>
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<p>1 (Off the record.)</p> <p>2 THE VIDEOGRAPHER: The time is 3:56      3 PM, we are back on the record.</p> <p>4 Q (BY MR. BLANKE) So, Mr. Frank, in      5 your conversations with Defendant Green, I think      6 you said in 2021 after the lawsuit was filed, I      7 think?</p> <p>8 A Mm-hmm. Yes.</p> <p>9 Q And it was about Garavaglia's forced      10 leaves, I take it? The conversation?</p> <p>11 MR. NORWOOD: Well, let me object      12 because that mischaracterizes his testimony.</p> <p>13 Q (BY MR. BLANKE) Okay. What was it      14 about?</p> <p>15 A The conversation was actually about      16 concerns about the state audit.</p> <p>17 Q And what -- what specifically were      18 her concerns?</p> <p>19 A Just that there was going to be      20 negative findings about the Comptroller's office's      21 result of things that occurred in the office, so.</p> <p>22 Q Did she give you the impression that      23 the audit was still ongoing? The audit of the      24 Comptroller's office?</p> <p>25 A It was kind of ambiguous. I -- I</p>	<p>1 Green, though, in 2021, did you -- did she discuss      2 anything with you specifically with regard to what      3 she was worried about with regard to the audit?</p> <p>4 A No. As a matter of fact, just to      5 amplify on that, I didn't even know that -- that      6 municipal courts was involved. I stated I thought      7 it was something to do with corrections, but --</p> <p>8 Q What does that mean?</p> <p>9 A Pardon?</p> <p>10 Q What do you mean, corrections? What      11 does that mean?</p> <p>12 A The correctional division, I thought      13 there might have been some concerns about the      14 correctional division, but --</p> <p>15 Q She said that, or you just thought      16 that?</p> <p>17 A No, I -- I might have thought that --      18 I might have been mistaken because I was also      19 called -- called as an expert witness in some -- by      20 a different firm about some issues with      21 corrections, so it just may -- may have -- may have      22 been, you know, my memory.</p> <p>23 I thought that during the initial      24 conversation, though, that Judy Armstrong had --      25 had mentioned that as a particular department but</p>

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<p>1 I'm not sure. We did not discuss any of the 2 specifics other than the gravity of what the 3 allegations were.</p> <p>4 Q I'm lost as to why the -- what does 5 the Department of Corrections have to do with 6 anything? Would --</p> <p>7 A I'm not sure that it does. I just 8 said I thought that Judy Armstrong started, you 9 know, a discussion that there were perhaps problems 10 with something to do in corrections. In -- in 11 terms of -- of, um, you know, the funds or 12 contracts or whatever. We didn't get into specific 13 details about it.</p> <p>14 Q Okay.</p> <p>15 A But I don't remember ever having 16 heard anything.</p> <p>17 Q Would this have related to anything 18 that had to do with -- with Mr. Garavaglia?</p> <p>19 A Yeah, it was -- it would have been in 20 connection with the original conversation that I 21 had with Judy Armstrong that was set up by Chana 22 Morton that Saturday. But I'm -- I'm not sure it 23 was corrections or not. I -- I might have been 24 mistaken with that.</p> <p>25 Q Did you take any notes of that -- of</p>	<p>1 was ongoing during this period of time. Is that 2 your understanding?</p> <p>3 A Yes.</p> <p>4 Q All right. And at the time you had 5 your discussion with Judy Armstrong that you 6 identified on this Saturday before the 7 pre-termination notice -- so we're talking about 8 the Saturday before July 2nd; right?</p> <p>9 A Yes.</p> <p>10 MR. BLANKE: You said -- you said 11 "pre-termination."</p> <p>12 MR. NORWOOD: I'm sorry -- (Overtalking - inaudible.)</p> <p>13 MR. NORWOOD: -- let me withdraw. (Overtalking - inaudible.)</p> <p>14 Q (BY MR. NORWOOD) The forced leave.</p> <p>15 A Yes.</p> <p>16 Q The first forced leave.</p> <p>17 A Yeah.</p> <p>18 Q Okay. July 2, 2019, was the first 19 forced leave notification and communication and 20 approval by you; correct? July 2nd --</p> <p>21 A Right.</p> <p>22 Q -- 2019; right?</p> <p>23 A Yeah, and I don't have my calendar.</p>
<p>1 either of those conversations?</p> <p>2 A No, no, no, be -- no, I did not. I 3 had asked them again pur -- and reminded them that 4 pursuant to the administrative regulation, that 5 they needed to follow up with me within the 72 6 hours and, you know, to request that and --</p> <p>7 Q To the best of your knowledge, when 8 you were talking to Miss Green in 2021 -- first of 9 all, that was a phone call, or on -- or in person?</p> <p>10 A No, I haven't seen Miss Green for 11 some time. It was a phone call. She called me 12 maybe at like 5:30, 6 o'clock at night.</p> <p>13 Q Do -- do you know whether there was 14 anyone else on the phone, on that phone 15 conversation?</p> <p>16 A No, there would not have been because 17 this was from her private number.</p> <p>18 Q Okay. And -- anything else?</p> <p>19 MR. BLANKE: That'll be it for now.</p> <p>20 RE-EXAMINATION</p> <p>21 QUESTIONS BY MR. NORWOOD:</p> <p>22 Q Okay. Let me try to wind things down 23 quickly. Do you know -- well. Throughout the 24 correspondence and communication and your 25 understanding, this was a -- an investigation that</p>	<p>1 I believe that would be a Monday. It was a Monday.</p> <p>2 Q Whether it was a Monday or a 3 Tuesday --</p> <p>4 A It was --</p> <p>5 Q -- the Saturday before that is when 6 you would have had the conversation.</p> <p>7 A Yes. That, I recall.</p> <p>8 Q All right. And do you know what 9 additional information was unearthed between the 10 time you had the discussion with them the Saturday 11 before the first forced leave and the time when the 12 pre-termination notice was actually issued in 13 August?</p> <p>14 A In August? No.</p> <p>15 Q I mean, so in other words, you don't 16 know what was being unearthed during this 17 investigative process; is that a fair statement?</p> <p>18 A Very fair.</p> <p>19 Q All right. And is it common for 20 appointing authorities to provide you with that 21 kind of detail in order to get you to approve or 22 sign off on a forced leave?</p> <p>23 A No, they generally just talk to me 24 about what type of general behavior, like bullying, 25 harassment, refusal -- I mean refusal to test for</p>
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<p>1       drugs, alcohol, drug alcohol failure.</p> <p>2           As a matter of fact those are even</p> <p>3       delegated to my employee relations manager. So</p> <p>4       they typically just will give me an outline that</p> <p>5       there was serious harassment at work, or</p> <p>6       falsification of records, things like that.</p> <p>7       <b>Q   But not the details about the</b></p> <p>8       <b>specifics, allegations, or anything of that sort?</b></p> <p>9       A   No. The details are required in the</p> <p>10      pre-disciplinary review notice or the</p> <p>11      pre-termination hearing -- or not hearing,</p> <p>12      pre-termination review notice. That's when, under</p> <p>13      our rules and under our perception of -- of due</p> <p>14      process, that you need to give the person ample</p> <p>15      time to review and -- and really list through those</p> <p>16      specifics.</p> <p>17       <b>Q   Okay. Do you know if the</b></p> <p>18       <b>Comptroller's office prepared different drafts of</b></p> <p>19       <b>communications before they were either sent out</b></p> <p>20       <b>to you or before they may have been sent out to</b></p> <p>21       <b>Mr. Garavaglia? Do you know that?</b></p> <p>22       A   I had no personal knowledge of that</p> <p>23      until when I saw the different letters today.</p> <p>24       <b>Q   Okay. So -- so that's something you</b></p> <p>25       <b>wouldn't have been privy to in terms of --</b></p>	<p>1       <b>Deputy City Counselor.</b></p> <p>2       A   Yeah.</p> <p>3       <b>Q   Thank you.</b></p> <p>4           <b>And so it was your understanding that</b></p> <p>5       <b>she was working with counsel to -- as part of this</b></p> <p>6       <b>process?</b></p> <p>7       A   Yes.</p> <p>8       <b>Q   All right. Based upon your</b></p> <p>9       <b>interactions with the Comptroller's office, was it</b></p> <p>10      <b>your impression that they were trying to make sure</b></p> <p>11      <b>that this thing was done correctly in accordance</b></p> <p>12      <b>with the procedures in your office and the</b></p> <p>13      <b>administrative regulations?</b></p> <p>14       A   Yes, sir, I -- I believe so because</p> <p>15      that's why they called me on a Saturday afternoon</p> <p>16      and still waiting -- until waiting for Monday</p> <p>17      morning.</p> <p>18       <b>Q   Okay. I want to get some clarity on</b></p> <p>19       <b>the question of the forced leave and your approval.</b></p> <p>20       <b>If a request for forced leave comes to you and you</b></p> <p>21       <b>don't approve it, can the appointing authority make</b></p> <p>22       <b>it happen on their own without your approval?</b></p> <p>23       A   No, it's discretionary.</p> <p>24       <b>Q   With you?</b></p> <p>25       A   Yes. With me.</p>
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<p>1       A   No.</p> <p>2       <b>Q   -- what was happening internally in</b></p> <p>3       <b>her office regarding draft communications; correct?</b></p> <p>4       A   No. Sometimes some appointing</p> <p>5       authorities will, rarely, but sometimes they might</p> <p>6       give me a draft letter to review, but usually they</p> <p>7       do not.</p> <p>8       <b>Q   Okay.</b></p> <p>9       A   Usually do not.</p> <p>10      <b>Q   And you've testified that it was your</b></p> <p>11      <b>understanding the Comptroller's office was working</b></p> <p>12      <b>with the City Counselor's office through Miss</b></p> <p>13      <b>Kistler in this process; correct?</b></p> <p>14      A   Yes.</p> <p>15       MR. BLANKE: Let me just object, I</p> <p>16      still don't think that in redirect you can lead the</p> <p>17      witness, so leading.</p> <p>18       <b>Q   (BY MR. NORWOOD) Well, do you know</b></p> <p>19       <b>whether or not the Comptroller was working with</b></p> <p>20       <b>Assistant City Counselor Nancy Kistler as it</b></p> <p>21       <b>relates to this matter?</b></p> <p>22       MS. HAMILTON: Deputy.</p> <p>23       A   Yes. Deputy City Counselor Nancy</p> <p>24       Kistler.</p> <p>25       <b>Q   (BY MR. NORWOOD) Okay, I'm sorry,</b></p>	<p>1       <b>Q   So you're -- you're -- if you, in</b></p> <p>2       <b>this case, decided that the forced leave was</b></p> <p>3       <b>improper and you disapproved it, that would have</b></p> <p>4       <b>been the end of it; correct?</b></p> <p>5       A   Yes.</p> <p>6       <b>Q   All right. And that's by the</b></p> <p>7       <b>regulation?</b></p> <p>8       A   Yes.</p> <p>9       MR. BLANKE: Objection, leading.</p> <p>10      Try.</p> <p>11       <b>Q   (BY MR. NORWOOD) All right. Is it</b></p> <p>12       <b>by the regulation?</b></p> <p>13       A   It is by the regulation.</p> <p>14       <b>Q   And the regulation we're talking</b></p> <p>15       <b>about is Administrative Regulation 117 --</b></p> <p>16       A   Yes.</p> <p>17       <b>Q   -- is that right?</b></p> <p>18       A   That is correct.</p> <p>19       <b>Q   All right. And -- and just so I'm</b></p> <p>20       <b>clear and the record's clear, is it -- do different</b></p> <p>21       <b>appointing authorities reach out to you in your</b></p> <p>22       <b>office in order to get clarity on procedures as it</b></p> <p>23       <b>relates to forced leave, pre-termination; is that</b></p> <p>24       <b>common?</b></p> <p>25       A   They did it frequently.</p>

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<p style="text-align: right;">Page 237</p> <p>1 Q Okay. And you talked about forced 2 leave being one of those things that is tricky? 3 A Yes. 4 Q All right. And so in that context, 5 were you getting a lot of requests? 6 A Yes. 7 Q For clarity? 8 A Yes. 9 Q Okay. Let's go to -- this is the 10 packet that we received from counsel -- 11 A Thank you. 12 Q (BY MR. NORWOOD) -- the non-indexed 13 batch -- 14 (Overtalking - inaudible.) 15 Q (BY MR. NORWOOD) -- of documents. 16 MR. BLANKE: Do you have -- 17 Q (BY MR. NORWOOD) And so -- 18 MR. BLANKE: This may be yours. 19 Q (BY MR. NORWOOD) -- if we could look 20 at page 215, it's GARAVAGLIA 215? 21 A I just opened to it. Pardon me. 22 It's funny after I didn't find anything all 23 afternoon. 24 Q But you're right there. All right. 25 A Pardon me. Okay.</p>	<p style="text-align: right;">Page 239</p> <p>1 already clear on multiple records, but if you look 2 at the August 28, 2019, letter from Ashley McClain 3 to Mr. Schmitz and to Miss Kistler, I think we read 4 through some of that, but I want to focus on the 5 next to last paragraph. 6 MR. BLANKE: Where -- where are you 7 now? 8 MR. NORWOOD: August 26, (sic), 2019, 9 letter from Ashley McClain to Mr. Schmitz and Miss 10 Kistler. 11 MR. BLANKE: Okay. 12 MR. NORWOOD: You talked about it. 13 MR. BLANKE: Okay. 14 Q (BY MR. NORWOOD) Do you have it? 15 A Yes, I do. 16 MR. NORWOOD: Do you have it? 17 MR. BLANKE: Not yet, but I will. Go 18 ahead. 19 MR. NORWOOD: Do you have it? 20 MR. BLANKE: I'm familiar with it, 21 but go ahead. 22 MR. NORWOOD: Okay. 23 Q (BY MR. NORWOOD) All right. The 24 last sentence says -- and this was after it was 25 approved to officially withdraw the request for</p>
<p style="text-align: right;">Page 238</p> <p>1 Q All right. You must be ready to go. 2 July 23, 2019, that is the letter from Mr. Paul 3 Schmitz to the Civil Service Commis -- Miss McClain 4 at the Civil Service Commission; correct? 5 A Yes. 6 Q And in that letter, if we go to the 7 second line, it says, quote, (Quote as read): 8 As a new notice was issued on 9 July 18, 2019, this letter serves as 10 timely notice of his request to 11 appeal this second placement of 12 forced leave effective July 18, 2019, 13 by the Appointing Authority, Darlene 14 Green, the Comptroller, City of 15 St. Louis. 16 Do you see that? 17 A Yes. 18 Q So that -- does that suggest to you 19 that at least as of July 23, 2019, Mr. Garavaglia 20 and Mr. Paul -- Paul Schmitz had received 21 notification of this July 18, 2019, forced leave 22 letter? 23 A Yes. 24 Q All right. And I just want to make 25 sure we get clear on the record, and I think it's</p>	<p style="text-align: right;">Page 240</p> <p>1 forced leave dated July 18, 2019. After that, as 2 part of that communication from Miss McClain, the 3 third paragraph says, quote, (Quote as read): 4 Any accrued leave time Mr. Garavaglia 5 used during this period of forced 6 leave from July 18, 2019, through 7 August 28, 2019, shall be restored. 8 Do you see that? 9 A Yes. 10 Q And is it your understanding that in 11 fact that did occur? 12 A Yes. That would -- that would occur 13 because a copy of this would have gone to my 14 executive secretary who would take it to personnel 15 services who would physically make sure that was 16 done. 17 Q Okay. And so effectively, it's like 18 it didn't happen? 19 A Pro forma, yeah, yeah. 20 Q Right. And then Mr. Garavaglia was 21 getting paid during this particular time? 22 A Yes. 23 Q Okay. 24 MR. NORWOOD: All right. I have no 25 further questions at this time.</p>

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<p>1           MR. BLANKE: Um, are you going to ask 2       any questions?</p> <p>3           MS. HAMILTON: No.</p> <p>4           MR. BLANKE: Okay. Hold -- hold on 5       one second.</p> <p>6           (Off the record.)</p> <p>7           MR. BLANKE: Okay, I do have a 8       question.</p> <p>9           RE-EXAMINATION</p> <p>10          QUESTIONS BY MR. BLANKE:</p> <p>11         <b>Q You saw Judge Frawley's Order that 12       says that if a Civil Service Commission overruled 13       the forced leave, any vacation time that he took 14       would not be restored; correct?</b></p> <p>15         A That's correct.</p> <p>16         <b>Q The rule is different when the 17       request is withdrawn?</b></p> <p>18         A If the request is withdrawn, then 19       it's as if the employee were never on forced leave 20       and they would be paid for any time they were 21       taking except for the fact that their vacation 22       would not be restored if they took that vacation 23       time.</p> <p>24         <b>Q So -- so then this is not correct.</b></p> <p>25         <b>This letter from Miss McClain. This sentence that</b></p>	<p>1           <b>different between -- if the civil service -- about 2       restoring vacation time, is the rule different 3       about restoring vacation time when the Civil 4       Service Commission overrules the forced leave 5       versus when the Comptroller withdraws the forced 6       leave?</b></p> <p>7         A No. The rule can't be different 8       because it's not only contained in my 9       administrative regulation, but it's also contained 10       in, you know, our compensation ordinance, which is 11       adopted into law by the Civil Service Commission, 12       the Board of Aldermen, and the mayor.</p> <p>13         <b>Q Okay. So I am completely flummoxed, 14       and it's probably my fault, but Miss McClain is 15       saying in this letter of August 28, and I quote, 16       (Quote as read):</b></p> <p>17           <b>Any accrued leave time Mr. Garavaglia 18       used during this period of forced 19       leave from July 18, 2019, through 20       August 28, 2019, shall be restored. 21       Did I read that correctly?</b></p> <p>22         A No, actually, that's -- that's a good 23       -- a good catch and, again, this is a -- a tricky 24       thing, but a rescission is if it never happened. 25       So I mean that would be correct. And my opinion as</p>
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<p>1         <b>Mr. Norwood just read. McClain says "Any accrued 2       leave time." Not paid -- paid -- not paid -- not 3       payments but (Quote as read):</b></p> <p>4           <b>Any accrued leave time that 5       Mr. Garavaglia used during this 6       period of forced leave shall be 7       restored.</b></p> <p>8           <b>That's not correct, then, is it --</b></p> <p>9         MR. NORWOOD: Well --</p> <p>10        <b>Q (BY MR. NORWOOD) -- or is it?</b></p> <p>11        MR. NORWOOD: -- let me object that 12       assumes facts that are inconsistent with your 13       client's affidavit. But subject to that.</p> <p>14        A What Ms. McClain is saying is that 15       any that he used should be restored, you know, if 16       he chose to use it, you know, so -- so that's -- 17       that's the point, is that Ms. McClain, since there 18       was no forced leave hearing, you know, wouldn't 19       necessarily know whether or not, you know, the 20       person had chosen to take accrued vacation and 21       compensatory leave or not, just as like I wouldn't.</p> <p>22        That's not something we would 23       normally know until some kind of hearing and 24       resolution, you know, were -- were reached.</p> <p>25        <b>Q (BY MR. BLANKE) Is the rule</b></p>	<p>1         former director is if you rescind it and you used 2       any -- any time, but that might call for a legal --</p> <p>3           MR. NORWOOD: Yeah, let's not --</p> <p>4         A -- rendering, I -- that's a little 5       over my head right now.</p> <p>6           MR. NORWOOD: All right. Great.</p> <p>7         <b>Q (BY MR. BLANKE) Well, then, I won't 8       ask for what your opinion is on the merits of that 9       question --</b></p> <p>10       A Yeah.</p> <p>11       <b>Q -- but so is it now your testimony 12       that you don't know whether what she's saying is 13       correct or not?</b></p> <p>14       A Yeah, in the case of -- I -- I don't 15       know for certain if the -- because what -- what I 16       am aware of are the parameters of the -- the 17       Administrative Reg 117, which states that, again, 18       if you use the time to stay in paid -- paid status 19       when you're in forced leave, you know, and then -- 20       then you're paid, you know, that's it.</p> <p>21       But, you know, a rescission of a 22       forced leave isn't entirely different. In that 23       case, you know, if you used your time, that time 24       would be restored, and we've done that in the past.</p> <p>25       So I believe Miss McClain's correct</p>

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<p>1 but I would defer, you know, to our law department 2 for a final reading on that.</p> <p>3       <b>Q Just one more thing. And switching</b> 4       <b>back from McClain back to Judge Frawley, he clearly</b> 5       <b>says in his Order of August 22, 2019, (Quote as</b> 6       <b>read):</b></p> <p>7       <b>but if the forced leave is</b> 8       <b>disapproved, the employee will not</b> 9       <b>be restored his vacation leave.</b> 10      <b>Correct? That's his finding; right?</b></p> <p>11     <b>His ruling. Correct?</b></p> <p>12     MS. HAMILTON: I would --</p> <p>13     MR. NORWOOD: Let me object --</p> <p>14     MS. HAMILTON: I will just object</p> <p>15     that it's been asked and answered, the document</p> <p>16     speaks for itself. Subject to that, you can</p> <p>17     answer.</p> <p>18     A If the forced leave is disapproved</p> <p>19     and the employee were out for two or three days, I</p> <p>20     would order that that person have their vacation</p> <p>21     and compensatory time restored. Because that --</p> <p>22     <b>Q (BY MR. BLANKE) Contrary -- contrary</b> 23     <b>to Judge Frawley's ruling?</b></p> <p>24     A No, that's really what he's -- or I</p> <p>25     guess I'm saying what -- what Ashley McClain said</p>	<p>1       <b>QUESTIONS BY MR. NORWOOD:</b> 2       <b>Q Do you know if, in this case,</b> 3       <b>Mr. Garavaglia submitted an affidavit to the court</b> 4       <b>swearing under oath that he got all of that back?</b> 5       <b>The accrued time and vacation time he may have</b> 6       <b>taken? Do you know if --</b></p> <p>7       A I don't know.</p> <p>8       MR. NORWOOD: All right. I have no</p> <p>9       further questions.</p> <p>10      MR. BLANKE: Okay. That's all folks.</p> <p>11      You want to talk to him about signature?</p> <p>12      THE WITNESS: All right. Thank you.</p> <p>13      MS. HAMILTON: Yeah, we'll read and</p> <p>14      sign.</p> <p>15      THE VIDEOGRAPHER: Time is 4:19, we</p> <p>16      are off the record. This concludes our deposition</p> <p>17      of Richard Frank.</p> <p>18      THE REPORTER: Mr. Norwood, do you</p> <p>19      like an e-tran?</p> <p>20      MR. NORWOOD: Yep.</p> <p>21      THE REPORTER: Exhibits, or does</p> <p>22      everybody --</p> <p>23      MR. NORWOOD: Let me do this. To</p> <p>24      make it easier for you, I'm going to give you those</p> <p>25      exhibits. How about that?</p>
<p>1       is correct, I think Judge Frawley misread</p> <p>2       Administrative Regulation 117 in terms of forced</p> <p>3       leave.</p> <p>4       <b>Q Okay. That explains it.</b></p> <p>5       A Yeah, it does. And pardon me, but</p> <p>6       I've also had judges grant relief when -- when it</p> <p>7       didn't exist. Very --</p> <p>8       <b>Q Sure.</b></p> <p>9       A -- prominent judges, so.</p> <p>10      <b>Q But at least I understand what you're</b> 11      <b>saying now.</b></p> <p>12      A I understand. Thank you very much</p> <p>13      for the conflict there, but...</p> <p>14      MR. BLANKE: Did you get all that?</p> <p>15      THE VIDEOGRAPHER: I got all that.</p> <p>16      MR. BLANKE: Thank God.</p> <p>17      THE WITNESS: I'm sorry.</p> <p>18      MR. BLANKE: Okay.</p> <p>19      THE WITNESS: These hearing officers</p> <p>20      don't ask me before they issue their orders.</p> <p>21      MR. BLANKE: Okay. I don't have</p> <p>22      anything further.</p> <p>23      MR. NORWOOD: I just have one. Maybe</p> <p>24      two.</p> <p>25      RE-EXAMINATION</p>	<p>1       THE REPORTER: Thank you.</p> <p>2       MS. HAMILTON: I'll take an E-tran</p> <p>3       with the exhibits.</p> <p>4       MR. BLANKE: E-tran is fine and I</p> <p>5       don't need the exhibits. And a word index, please,</p> <p>6       also.</p> <p>7       (Wherein, the taking of the instant</p> <p>8       deposition ceased at 4:19 PM)</p> <p>9       (Deposition to be read and signed by</p> <p>10      the witness.)</p>

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<p style="text-align: center;">Page 249</p> <p>1                   CERTIFICATE OF REPORTER      2      3                   I, TARA SCHWAKE, a Registered      4                   Professional Reporter and Notary Public within and      5                   for the State of Missouri, do hereby certify that      6                   the witness whose testimony appears in the      7                   foregoing deposition was duly sworn by me; that the      8                   testimony of said witness was taken by me to the      9                   best of my ability and thereafter reduced to      10                  typewriting under my direction; that I am neither      11                  counsel for, related to, nor employed by any of the      12                  parties to the action in which this deposition was      13                  taken, and further that I am not a relative or      14                  employee of any attorney or counsel employed by the      15                  parties thereto, nor financially or otherwise      16                  interested in the outcome of the action.</p> <p>17      18      19                        20                  Notary Public in and for      21                  The State of Missouri      22      23      24      25</p>	<p style="text-align: center;">Page 251</p> <p>1                   ERRATA SHEET      2                   Witness Name: RICHARD R. FRANK      3                   Case Name: JAMES GARAVAGLIA v. CITY OF ST. LOUIS, et      4                   al.      5                   Date Taken: MARCH 10, 2022      6                   Page # _____ Line # _____      7                   Should read: _____      8                   Reason for change: _____      9                   Page # _____ Line # _____      10                  Should read: _____      11                  Reason for change: _____      12                  Page # _____ Line # _____      13                  Should read: _____      14                  Reason for change: _____      15                  Page # _____ Line # _____      16                  Should read: _____      17                  Reason for change: _____      18                  Page # _____ Line # _____      19                  Should read: _____      20                  Reason for change: _____      21                  Page # _____ Line # _____      22                  Should read: _____      23                  Reason for change: _____      24      25                  Witness Signature: _____</p>
<p style="text-align: center;">Page 250</p> <p>1                   ALARIS LITIGATION SERVICES      2      3                   March 16, 2022      4      5                   Ms. Sheena Hamilton, City Counselor      6                   City of St. Louis, Law Department      7                   City Counselor's Office      8                   1200 Market Street, Room 314      9                   St. Louis, Missouri 63103      10                  IN RE: JAMES GARAVAGLIA v. CITY OF ST. LOUIS, et      11                  al.      12      13                  Dear Ms. Hamilton:      14      15                  Please find enclosed your copies of the deposition of      16                  RICHARD R. FRANK taken on March 10, 2022 in the      17                  above-referenced case. Also enclosed is the original      18                  signature page and errata sheets.      19      20                  Please have the witness read your copy of the      21                  transcript, indicate any changes and/or corrections      22                  desired on the errata sheets, and sign the signature      23                  page before a notary public.      24      25                  Please return the errata sheets and notarized      16                  signature page within 30 days to our office at 711 N      17                  11th Street, St. Louis, MO 63101 for filing.      18      19      20                  Sincerely,      21      22      23                  TARA SCHWAKE      24      25                  Enclosures</p>	<p style="text-align: center;">Page 252</p> <p>1                   STATE OF _____      2      3                   COUNTY OF _____      4      5                   I, RICHARD R. FRANK, do hereby certify:      6                   That I have read the foregoing deposition;      7                   That I have made such changes in form      8                   and/or substance to the within deposition as might      9                   be necessary to render the same true and correct;      10                  That having made such changes thereon, I      11                  hereby subscribe my name to the deposition.      12                  I declare under penalty of perjury that the      13                  foregoing is true and correct.      14                  Executed this _____ day of _____,      15                  20_____, at _____.      16      17      18      19      20                  RICHARD R. FRANK      21      22      23                  NOTARY PUBLIC      24                  My Commission Expires:      25</p>

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